TITLE 33.—NAVIGATION AND NAVIGABLE WATERS

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Chapter 1.—NAVIGABLE WATERS GENERALLY

WATERS DECLARED NONNAVIGABLE; CHANGE OF NAME

Sec.
59c–2. East River, New York [New].
59j. Delaware River, Philadelphia County, Pennsylvania; permanent structures [New].
59k. Wicomico River, Maryland [New].

GENERAL PROVISIONS

§ 1. Regulations by Secretary of the Army for navigation of waters generally.

RULES AND REGULATIONS

Administrative provisions covering definitions which the Coast Guard uses to examine waters to determine whether the Coast Guard has jurisdiction on those waters under particular laws of the United States are set out in chapter I, subchapter A, part 2, of Title 33, Navigation and Navigable Waters, in the Code of Federal Regulations. Such part 2, consisting of sections 2.01–1 to 2.10–10, sets out definitions of jurisdictional terms and provides for the availability of jurisdictional decisions.

WATERS DECLARED NONNAVIGABLE; CHANGE OF NAME

§ 59c–2. East River, New York.

If the Secretary of the Army, acting through the Chief of Engineers, finds that the proposed project to be erected at the location to be declared non-navigable under this section is in the public interest, on the basis of engineering studies to determine the location and structural stability of the bulkheading and filling and permanent pile-supported structures in order to preserve and maintain the remaining navigable waterway and on the basis of environmental studies conducted pursuant to the National Environmental Policy Act of 1969, then those portions of the East River in New York County, State of New York, bounded and described as follows are hereby declared to be not navigable waters of the United States within the meaning of the laws of the United States, and the consent of Congress is hereby given to the filling in of all or any part thereof or the erection of permanent pile-supported structures thereon: That portion of the East River in New York County, State of New York, lying shoreward of a line with the United States pierhead line as it exists on March 7, 1974, bounded on the north by the south side of Rutgers Slip extended easterly, and bounded on the south by the southeasterly border of Battery Park at a point adjacent to the westerly end of South Street extended south by southwest, is hereby declared to be non-navigable waters of the United States. This declaration shall apply only to portions of the above-described area which are bulkheaded and filled or occupied by permanent pile-supported structures. Plans for bulkheading and filling and permanent pile-supported structures shall be approved by the Secretary of the Army, acting through the Chief of Engineers. Local interests shall reimburse the Federal Government for engineering and all other costs incurred under this section. (Pub. L. 93–251, title I, § 51, Mar. 7, 1974, 88 Stat. 26.)

REFERENCES IN TEXT

National Environmental Policy Act of 1969, referred to in the text, is classified to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare.

§ 59j. Delaware River, Philadelphia County, Pennsylvania; permanent structures.

The portion of the Delaware River in Philadelphia County, Commonwealth of Pennsylvania, lying between all that certain lot or piece of ground situate in the second and fifth wards of the city of Philadelphia described as follows:

Beginning at a point on the easterly side of Delaware Avenue (variable width) said side being the bulkhead line of the Delaware River (approved by the Secretary of War on September 10, 1940), at the distance of 1,833.652 feet from an angle point on the easterly side of said Delaware Avenue south of Washington Avenue;

thence extending along the easterly side of said Delaware Avenue the following courses and distances, (1) north 0 degree 45 minutes 33.2 seconds west 2,524.698 feet to a point; (2) north 9 degrees 36 minutes 25 seconds east, 2,168.160 feet to a point; (3) north 13 degrees 26 minutes 45.8 seconds east, 2,039.270 feet to a point; (4) north 20 degrees 12 minutes 52.4 seconds east, 35.180 feet to an angle point in Delaware Avenue;

thence continuing north 20 degrees 12 minutes 52.4 seconds east along the said bulkhead line, the distance of 574.970 feet to a point on the south house line of Callowhill Street produced;

thence extending along the south house line of Callowhill Street produced south 80 degrees 47 minutes 30.6 seconds east, the distance of 523.908 feet to a point on the pierhead line of the Delaware River (approved by the Secretary of War on September 10, 1940);

thence extending along the said pierhead line the following courses and distances, (1) south 17 degrees 52 minutes 48.5 seconds west, 605.262 feet to a point; (2) south 14 degrees 14 minutes 14.7 seconds west, 1,372.530 feet to a point; (3) south 10 degrees 37 minutes 35.3 seconds west, 1,252.160 feet to a point; (4) south 8 degrees 23 minutes 50.4

seconds west, 1,450.250 feet to a point; (5) south 2 degrees 22 minutes 45.9 seconds west, 1,221.670 feet to a point; (6) south 1 degree 4 minutes 36 seconds east, 1,468.775 feet to a point on the north house line of Catherine Street extended, thence extending north 76 degrees 56 minutes 29.2 seconds west, the distance of 555.911 feet to the first mentioned point and place of beginning is hereby declared not to be a navigable water of the United States within the meaning of the Constitution and laws of the United States, and the Consent of Congress is hereby given, for the filling or erection of permanent structures in all or any part of the described area.

(Pub. L. 92–605, § 1, Oct. 31, 1972, 86 Stat. 1493.)

PERMANENT STRUCTURES IN ABOVE-DESCRIBED AREA; APPROVAL OF PLANS

Section 2 of Pub. L. 92–605 provided that: "This declaration [this section] shall apply only to portions of the above-described area which are filled or occupied by permanent structures. No such filling or erection of structures in the above-described area shall be commenced until the plans therefor have been approved by the Secretary of the Army who shall, prior to granting such approval, give consideration to all factors affecting the general public interest and the impact of the proposed work on the environment."

§ 59k. Wicomico River, Maryland.

(a) If the Secretary of the Army acting through the Chief of Engineers, finds that the proposed project in Salisbury, Maryland, to be undertaken at the locations to be declared nonnavigable under this section is in the public interest, on the basis of engineering studies to determine the location and structural stability of any bulkheading and filling and permanent pile-supported structures, in order to preserve and maintain the remaining navigable waterway and on the basis of environmental studies conducted pursuant to the National Environmental Policy Act of 1969, then those portions of the South Prong of the Wicomico River in Wicomico County, State of Maryland, bounded and described as follows, are declared to be not a navigable water of the United States within the meaning of the laws of the United States, and the consent of Congress is hereby given, consistent with subsection (b) of this section, to the filling in of a part thereof or the erection of permanent pile-supported structures thereon: That portion of the South Prong of the Wicomico River in Salisbury, Maryland, bounded on the east by the west side of United States Route 13; on the west by the west side of the Mill Street Bridge; on the south by a line five feet landward from the present water's edge at high tide extending the entire length of the South Prong from the east boundary at United States Route 13 to the west boundary at the Mill Street Bridge; and on the north by a line five feet landward from the present water's edge at high tide extending the entire length of the South Prong from the east boundary at United States Route 13 to the west boundary at the Mill Street Bridge.

(b) This declaration shall apply only to the portions of the areas described in subsection (a) of this section which are bulkheaded and filled or occupied by permanent pile-supported structures. Plans for bulkheading and filling and permanent pile-supported structures shall be approved by the Secretary of the Army, acting through the Chief of Engineers. Such bulkheaded and filled areas or areas occupied by permanent pile-supported structures shall not reduce the existing width of the Wicomico River to less than sixty feet and a minimum depth of five feet shall be maintained within such sixty-foot width of the Wicomico River. Local interests shall reimburse the Federal Government for engineering and all other costs incurred under this section. (Pub. L. 93–251, title I, § 97, Mar. 7, 1974, 88 Stat. 40.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in text, is classified to section 4321 et seq. of Title 42, The Public Health and Welfare.

Chapter 3.—NAVIGATION RULES FOR HARBORS, RIVERS, AND INLAND WATERS GENERALLY

PRELIMINARY

§ 151. Demarcation of high seas lines.

CROSS REFERENCES

Vessel bridge-to-bridge radiotelephone requirement and capability for vessels on navigable waters of United States inside lines established under this section, see section 1203 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 1203 of this title; title 46 sections 88, 224a, 367, 404, 672–1, 672c.

RULES CONCERNING LIGHTS, ETC.

§ 180. Lights of vessel at anchor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

NO VESSEL UNDER ANY CIRCUMSTANCES TO NEGLECT PROPER PRECAUTIONS

§ 222. Lights on war and Coast Guard vessels; exhibition suspended.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

Chapter 4.—NAVIGATION RULES FOR GREAT LAKES AND THEIR CONNECTING AND TRIBUTARY WATERS

§ 258. Lights of vessel at anchor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

Chapter 5.—NAVIGATION RULES FOR RED RIVER OF THE NORTH AND RIVERS EMPTYING INTO GULF OF MEXICO AND TRIBUTARIES

§ 356. Exemption of Navy and Coast Guard vessels from compliance with International Rules of the Road.

Where any Navy or Coast Guard vessel of special construction, as certified to by the Secretary of the Navy, or the Secretary of Transportation in the case of Coast Guard vessels operating under the Department of Transportation, or such official or officials as either may designate, is now or may hereafter by virtue of statute, convention, or treaty, be exempt from compliance with any requirements of the International Rules of the Road, such type of vessel shall similarly be exempt from compliance with any corresponding requirement under the rules specified in this Act. (May 21, 1948, ch. 328, § 5, 62 Stat. 257.)

TRANSFER OF FUNCTIONS

References to the Secretary of the Treasury and Treasury Department are changed to Secretary of Transportation and Department of Transportation, respectively, pursuant to Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. Under such provisions, the Coast Guard was transferred to the Department of Transportation and all functions, powers and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation. See section 1655(b) of Title 49, Transportation.

Chapter 9.—PROTECTION OF NAVIGABLE WATERS AND OF HARBOR AND RIVER IMPROVEMENTS GENERALLY

DAM INSPECTION PROGRAM [NEW]

Sec.
467. Definition of Dam.
467a. Inspection of dams; exceptions.
467b. Investigation reports to Governors; remedial measures.
467c. Determination of danger to human life and property.
467d. Report to Congress.
467e. Existing liabilities and obligations unaffected.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1371, 1416 of this title.

IN GENERAL

§ 401. Construction of bridges, causeways, dams or dikes generally.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

§ 403. Obstruction of navigable waters generally; wharves; piers, etc.; excavations and filling in.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1503 of this title.

§ 407. Deposit of refuse in navigable waters generally.

TERMINATION OF DISCHARGE PERMIT PROGRAM

No permits for discharges into navigable waters to be issued under this section after Oct. 18, 1972, and the discharge permit program to be carried out instead under section 1342 of this title, with applications under this section pending on Oct. 18, 1972, to be deemed applications for permits under section 1342, see section 1342 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1342, 1402 of this title.

§ 413. Duty of United States attorneys and other Federal officers in enforcement of provisions; arrest of offenders.

The Department of Justice shall conduct the legal proceedings necessary to enforce the provisions of sections 401, 403, 404, 406, 407, 408, 409, 411, 549, 686, and 687 of this title; and it shall be the duty of United States attorneys to vigorously prosecute all offenders against the same whenever requested to do so by the Secretary of the Army or by any of the officials hereinafter designated, and it shall furthermore be the duty of said United States attorneys to report to the Attorney General of the United States the action taken by him against offenders so reported, and a transcript of such reports shall be transmitted to the Secretary of the Army by the Attorney General; and for the better enforcement of the said provisions and to facilitate the detection and bringing to punishment of such offenders, the officers and agents of the United States in charge of river and harbor improvements, and the assistant engineers and inspectors employed under them by authority of the Secretary of the Army, and the United States collectors of customs and other revenue officers shall have power and authority to swear out process, and to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by the said sections, or who may violate any of the provisions of the same: *Provided,* That no person shall be arrested without process for any offense not committed in the presence of some one of the aforesaid officials: *And provided further,* That whenever any arrest is made under such sections, the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States. (Mar. 3, 1899, ch. 425, § 17, 30 Stat. 1153; June 25, 1948, ch. 646, § 1, 62 Stat. 909, eff. Sept. 1, 1948.)

CODIFICATION

Section is set out in this Supplement to correct typographical error in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 409, 412, 418, 419, 499, 7021 of this title; title 48 section 1399.

§ 421. Deposit of refuse, etc., in Lake Michigan near Chicago.

CROSS REFERENCES

Discharges of pollutants into the navigable waters subject to this section to be regulated pursuant to Federal Water Pollution Control Act except as to effect on navigation and anchorage, see section 1371 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1371 of this title.

NEW YORK HARBOR, HARBOR OF HAMPTON ROADS, AND HARBOR OF BALTIMORE

§§ 441 to 451b.

CROSS REFERENCES

Discharges of pollutants into the navigable waters subject to these sections to be regulated pursuant to Federal Water Pollution Control Act except as to effect on navigation and anchorage, see section 1371 of this title.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 1371 of this title.

DAM INSPECTION PROGRAM [NEW]

§ 467. Definition of dam.

The term "dam" as used in sections 467 to 467e of this title means any artificial barrier, including appurtenant works, which impounds or diverts water, and which (1) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation or (2) has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. Sections 467 to 467e of this title do not apply to any such barrier which is not in excess of six feet in

height, regardless of storage capacity or which has a storage capacity at maximum water storage elevation not in excess of fifteen acre-feet, regardless of height. (Pub. L. 92–367, § 1, Aug. 8, 1972, 86 Stat. 506.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467d, 467e of this title.

§ 467a. Inspection of dams; exceptions.

As soon as practicable, the Secretary of the Army, acting through the Chief of Engineers, shall carry out a national program of inspection of dams for the purpose of protecting human life and property. All dams in the United States shall be inspected by the Secretary except (1) dams under the jurisdiction of the Bureau of Reclamation, the Tennessee Valley Authority, or the International Boundary and Water Commission, (2) dams which have been constructed pursuant to licenses issued under the authority of the Federal Power Act, (3) dams which have been inspected within the twelve-month period immediately prior to August 8, 1972, by a State agency and which the Governor of such State requests be excluded from inspection, and (4) dams which the Secretary of the Army determines do not pose any threat to human life or property. The Secretary may inspect dams which have been licensed under the Federal Power Act upon request of the Federal Power Commission and dams under the jurisdiction of the International Boundary and Water Commission upon request of such Commission. (Pub. L. 92–367, § 2, Aug. 8, 1972, 86 Stat. 506.)

REFERENCES IN TEXT

Federal Power Act, referred to in text, is classified to chapter 12 (§ 791a et seq.) of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 467d, 467e of this title.

§ 467b. Investigation reports to Governors; remedial measures.

As soon as practicable after inspection of a dam, the Secretary shall notify the Governor of the State in which such dam is located the results of such investigation. The Secretary shall immediately notify the Governor of any hazardous conditions found during an inspection. The Secretary shall provide advice to the Governor, upon request, relating to timely remedial measures necessary to mitigate or obviate any hazardous conditions found during an inspection. (Pub. L. 92–367, § 3, Aug. 8, 1972, 86 Stat. 507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 467d, 467e of this title.

§ 467c. Determination of danger to human life and property.

For the purpose of determining whether a dam (including the waters impounded by such dam) constitutes a danger to human life or property, the Secretary shall take into consideration the possibility that the dam might be endangered by overtopping, seepage, settlement, erosion, sediment, cracking, earth movement, earthquakes, failure of bulkheads, flashboard, gates on conduits, or other conditions which exist or which might occur in any area in the vicinity of the dam. (Pub. L. 92–367, § 4, Aug. 8, 1972, 86 Stat. 507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 467d, 467e of this title.

§ 467d. Report to Congress.

The Secretary shall report to the Congress on or before July 1, 1974, on his activities under sections 467 to 467e of this title, which report shall include, but not be limited to—

(1) an inventory of all dams located in the United States;

(2) a review of each inspection made, the recommendations furnished to the Governor of the State in which such dam is located and information as to the implementation of such recommendation;

(3) recommendations for a comprehensive national program for the inspection, and regulation for safety purpose of dams of the Nation, and the respective responsibilities which should be assumed by Federal, State, and local governments and by public and private interests.

(Pub. L. 92–367, § 5, Aug. 8, 1972, 86 Stat. 507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 467e of this title.

§ 467e. Existing liabilities and obligations unaffected.

Nothing contained in sections 467 to 467e of this title and no action or failure to act under sections 467 to 467e of this title shall be construed (1) to create any liability in the United States or its officers or employees for the recovery of damages caused by such action of failure to act; or (2) to relieve an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam. (Pub. L. 92–367, § 6, Aug. 8, 1972, 86 Stat. 507.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 467d of this title.

Chapter 10.—ANCHORAGE GROUNDS AND HARBOR REGULATIONS GENERALLY

§ 471. Establishment by Secretary of Transportation of anchorage grounds and regulations generally.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 1655.

Chapter 11.—BRIDGES OVER NAVIGABLE WATERS

GENERAL BRIDGE AUTHORITY

Sec.
526a. Same; regulations; increment guidelines [New].

INTERNATIONAL BRIDGES [NEW]

535. Congressional consent to construction, maintenance, and operation of international bridges; conditions of consent.
535a. Congressional consent to State agreements with Canada and Mexico; Secretary of State's approval of agreements.
535b. Presidential approval; recommendations of Federal officials.

Sec.
535c. Secretary of Transportation's approval; commencement and completion requirements; extension of time limits.
535d. Tolls, collection methods; annual report; audit.
535e. Ownership.
(a) Sale, assignment, or transfer; Secretary of Transportation's approval.
(b) State status of original applicant upon acquisition of right, title, and interest after termination of private entity licenses, contracts, or orders.
535f. Applicability of provisions.
535g. Federal navigable waters and commerce jurisdiction unaffected.
535h. Report of Secretary of Transportation's approval during fiscal year.
535i. Reservation of right to alter or repeal.

§ 491. Approval of and deviation from plans.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 526a, 535, 535c of this title; title 49 section 1655.

§§ 492 to 498.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 526a, 535 of this title; title 49 section 1655.

§§ 498a to 499, 503 to 507.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

ALTERATION OF BRIDGES

§§ 511 to 523.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 49 section 1655.

GENERAL BRIDGE AUTHORITY

§ 525. Construction and operation of bridges; consent of Congress; approval of plans; private highway toll bridges.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 526a, 529, 530, 531, 532, 533 of this title; title 23 section 144; title 49 section 1655.

SECTION REFERRED TO IN D.C. CODE

This section is referred to in section 7–526 of the District of Columbia Code.

§ 526. Amount of tolls.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 525, 526a, 529, 530, 531, 532, 533 of this title; title 23 section 144; title 49 section 1655.

§ 526a. Same; regulations; increment guidelines.

The Secretary of Transportation shall promulgate regulations establishing guidelines governing any increase in tolls for use of any bridge constructed pursuant to either the General Bridge Act of 1906 or the General Bridge Act of 1946. (Pub. L. 93–87, title I, § 133(b), Aug. 13, 1973, 87 Stat. 267.)

REFERENCES IN TEXT

General Bridge Act of 1906, referred to in the text, is classified to sections 491–498 of this title.

General Bridge Act of 1946, referred to in the text, is classified to sections 525, 526, and 527 to 533 of this title.

CODIFICATION

Section was enacted as a part of the Federal-Aid Highway Act of 1973, and not as a part of the General Bridge Act of 1946, which is classified to sections 525, 526, and 527 to 533 of this title.

STUDY OF TOLL BRIDGE AUTHORITY; INVESTIGATION AND STUDY OF FEDERAL STATUTES AND REGULATIONS; REPORT TO CONGRESS

Section 133(a) of Pub. L. 93–87 provided that: "The Secretary of Transportation is authorized and directed to undertake a full and complete investigation and study of existing Federal statutes and regulations governing toll bridges over the navigable waters of the United States for the purpose of determining what action can and should be taken to assure just and reasonable tolls nationwide. The Secretary shall submit a report of the findings of such study and investigation to the Congress not later than July 1, 1974, together with his recommendations for modifications or additions to existing laws, regulations, and policies, except that in the case of the toll bridge at Chester, Illinois, the Secretary shall submit a report to the Congress not later than December 31, 1973."

§§ 527 to 533.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 526a of this title; title 49 section 1655.

INTERNATIONAL BRIDGES [NEW]

§ 535. Congressional consent to construction, maintenance, and operation of international bridges; conditions of consent.

The consent of Congress is hereby granted to the construction, maintenance, and operation of any bridge and approaches thereto, which will connect the United States with any foreign country (hereinafter in this Act referred to as an "international bridge") and to the collection of tolls for its use, so far as the United States has jurisdiction. Such consent shall be subject to (1) the approval of the proper authorities in the foreign country concerned; (2) the provisions of sections 491 to 498 of this title, except section 496 of this title, whether or not such bridge is to be built across or over any of the navigable waters of the United States; and (3) of the provisions of this Act. (Pub. L. 92–434, § 2, Sept. 26, 1972, 86 Stat. 731.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

SHORT TITLE

Section 1 of Pub. L. 92–434 provided: "That this Act [which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23] may be cited as the 'International Bridge Act of 1972'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535b of this title.

§ 535a. Congressional consent to State agreements with Canada and Mexico; Secretary of State's approval of agreements.

The consent of Congress is hereby granted for a State, or a subdivision or instrumentality of either, to enter into agreements—

(1) with the Government of Canada, a Canadian Province, or a subdivision or instrumentality of either, in the case of a bridge connecting the United States and Canada, or

(2) with the Government of Mexico, a Mexican State, or a subdivision or instrumentality of either, in the case of a bridge connecting the United States and Mexico,

for the construction, operation, and maintenance of such bridge in accordance with the applicable provisions of this Act. The effectiveness of such agreement

shall be conditioned on its approval by the Secretary of State. (Pub. L. 92–434, § 3, Sept. 26, 1972, 86 Stat. 731.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535f of this title.

§ 535b. Presidential approval; recommendations of Federal officials.

No bridge may be constructed, maintained, and operated as provided in section 535 of this title unless the President has given his approval thereto. In the course of determining whether to grant such approval, the President shall secure the advice and recommendations of (1) the United States section of the International Boundary and Water Commission, United States and Mexico, in the case of a bridge connecting the United States and Mexico, and (2) the heads of such departments and agencies of the Federal Government as he deems appropriate to determine the necessity for such bridge. (Pub. 92–434, § 4, Sept. 26, 1972, 86 Stat. 731).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535c of this title.

§ 535c. Secretary of Transportation's approval; commencement and completion requirements; extension of time limits.

The approval of the Secretary of Transportation, as required by section 491 of this title, shall be given only subsequent to the President's approval, as provided for in section 535b of this title, and shall be null and void unless the construction of the bridge is commenced within two years and completed within five years from the date of the Secretary's approval: *Provided, however*, That the Secretary, for good cause shown, may extend for a reasonable time either or both of the time limits herein provided. (Pub. L. 92–434, § 5, Sept. 26, 1972, 86 Stat. 732.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535h of this title.

§ 535d. Tolls, collection methods; annual report; audit.

If tolls are charged for the use of an international bridge constructed under this Act, the following provisions shall apply, so far as the United States has jurisdiction, in the case of a bridge constructed or acquired by a private individual, company, or other private entity:

(1) Tolls may be collected from the date of completion of the bridge for a period determined by the Secretary of Transportation to be a reasonable period for amortization of the cost of construction or acquisition of the bridge, including interest and financing costs, and a reasonable return on invested capital.

(2) At the end of such period, the United States portion of the bridge and its approaches, if not previously transferred to a public agency pursuant to section 535e of this title, shall become the property of the State having jurisdiction over the United States portion of the bridge, and no further compensation shall be deemed to be due such private individual, company, or other private entity.

(3) An accurate record of the amount paid for acquiring or constructing the bridge and its approaches, the actual expenditures for maintaining, repairing, and operating the same, and of the daily tolls collected, shall be kept and shall be reported annually to the Secretary of Transportation. Whenever he may deem advisable, the Secretary of Transportation shall audit, review, and inspect such records, books, accounts, and operations. (Pub. L. 92–434, § 6, Sept. 26, 1972, 86 Stat. 732.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535e of this title.

§ 535e. Ownership.

(a) Sale, assignment, or transfer; Secretary of Transportation's approval.

Nothing in this Act shall be deemed to prevent the individual, corporation, or other entity to which, pursuant to this Act, authorization has been given to construct, operate, and maintain an international bridge and the approaches thereto, from selling, assigning, or transferring the rights, powers, and privileges conferred by this Act: *Provided*, That such sale, assignment, or transfer shall be subject to approval by the Secretary of Transportation.

(b) State status of original applicant upon acquisition of right, title, and interest after termination of private entity licenses, contracts, or orders.

Upon the acquisition by a State or States, or by a subdivision or instrumentality thereof, of the right, title, and interest of a private individual, corporation, or other private entity, and to an international bridge, any license, contract, or order issued or entered into by the Secretary of Transportation, to or with such private individual, corporation, or other private entity, shall be deemed terminated forthwith. Thereafter, the State, subdivision, or instrumentality so acquiring shall operate and maintain such bridge in the same manner as if it had been the original applicant, and the provisions of section 535d of this title shall not apply. (Pub. L. 92–434, § 8, Sept. 26, 1972, 86 Stat. 732.)

REFERENCES IN TEXT

"This Act", referred to in subsec. (a), means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 535d of this title.

§ 535f. Applicability of provisions.

This Act shall apply to all international bridges constructed under the authority of this Act. Section 535a of this title and section 129(a)(3) of Title 23, shall apply to all international bridges the construction of which has been heretofore approved by Congress, notwithstanding any conflicting provision in any Act authorizing the construction of such a bridge or in any agreement entered into by the Federal Government and a State. (Pub. L. 92–434, § 9, Sept. 26, 1972, 86 Stat. 733.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

§ 535g. Federal navigable waters and commerce jurisdiction unaffected.

Nothing in this Act shall be construed to affect, impair, or diminish any right, power, or jurisdiction of the United States over or in regard to any navigable water or any interstate or foreign commerce. (Pub. L. 92–434, § 10, Sept. 26, 1972, 86 Stat. 733.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

§ 535h. Report of Secretary of Transportation's approval during fiscal year.

The Secretary of Transportation shall make a report of all approvals granted by him during the fiscal year pursuant to section 535c of this title in each annual report of the activities of the Department required by section 1658 of Title 49. (Pub. L. 92–434, § 11, Sept. 26, 1972, 86 Stat. 733.)

§ 535i. Reservation of right to alter or repeal.

The right to alter, amend, or repeal this Act is expressly reserved. (Pub. L. 92–434, § 12, Sept. 26, 1972, 86 Stat. 733.)

REFERENCES IN TEXT

"This Act", referred to in the text, means Pub. L. 92–434, which enacted sections 535 to 535i of this title and amended section 129(a)(3) of Title 23, Highways.

Chapter 12.—RIVER AND HARBOR IMPROVEMENTS GENERALLY

GENERAL PROVISIONS

Sec.
579. Projects authorized for eight or more years without Congressional appropriations; deauthorization list [New].
(a) Project review and submittal to Congress; reasons for recommendations; views of interested Federal agencies and Governors; notification of members in Congress from State and district of project site.
(b) Delivery of list to Houses in session; resolution for continuation of authorized projects; provisions inapplicable to projects submitted to Congress within prescribed period preceding adjournment sine die.
(c) Withdrawals from deauthorization list.
(d) Provisions inapplicable to authorized projects continued by resolution.
(e) Project review, on request by resolution, of authorized projects for inclusion in deauthorization list; submittal of report and reasons for exclusion recommendations to Congressional Committees.

GENERAL PROVISIONS

§ 567b. Pollution of Potomac drainage basin; control by State compacts.

CODIFICATION

Section is also set out in D.C. Code, § 7–1501.

§ 567b–1. Same; amended compact.

CODIFICATION

Section is also set out in D.C. Code, § 7–1502.

§ 579. Projects authorized for eight or more years without Congressional appropriations; deauthorization list.

(a) Project review and submittal to Congress; reasons for recommendations; views of interested Federal agencies and Governors; notification of members in Congress from State and district of project site.

As soon as practicable after March 7, 1974, and at least once each year thereafter, the Secretary of the Army, acting through the Chief of Engineers, shall review and submit to Congress a list of those authorized projects for works of improvement of rivers and harbors and other waterways for navigation, beach erosion, flood control, and other purposes which have been authorized for a period of at least eight years without any Congressional appropriations within the last eight years and which he determines, after appropriate review, should no longer be authorized. Each project so listed shall be accompanied by the recommendation of the Chief of Engineers together with his reasons for such recommendation. Prior to the submission of such list to the Congress, the Secretary of the Army, acting through the Chief of Engineers, shall obtain the views of interested Federal departments, agencies, and instrumentalities, and of the Governor of each State wherein such project would be located, which views shall be furnished within sixty days after being requested by the Secretary and which shall accompany the list submitted to Congress. Prior to the submission of such list to Congress the Secretary of the Army, acting through the Chief of Engineers, shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, a project (including any part thereof) on such list would be located.

(b) Delivery of list to Houses in session; resolution for continuation of authorized projects; provisions inapplicable to projects submitted to Congress within prescribed period preceding adjournment sine die.

Such list shall be delivered to both Houses on the same day and to each House while it is in session. A project on such list shall not be authorized at the end of the first period of one hundred and eighty calendar days of continuous session of Congress after the date such list is delivered to it unless between the date of delivery and the end of such one hundred an eighty-day period, either the Committee on Public Works of the House of Representatives or the Committee on Public Works of the Senate adopts a resolution stating that such project shall continue to be an authorized project. For the purposes of this section continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the one hundred and eighty-day period. The provisions of this section shall not apply to any project contained in a list of projects submitted to the Congress within one hundred and eighty days preceding the date of adjournment sine die of any session of Congress.

(c) Withdrawals from deauthorization list.

Nothing in this section shall be construed so as to preclude the Secretary from withdrawing any project or projects from such list at any time prior to the

final day of the period provided for in subsection (b) of this section.

(d) Provisions inapplicable to authorized projects continued by resolution.

This section shall not be applicable to any project which has been included in a resolution adopted pursuant to subsection (b) of this section.

(e) Project review, on request by resolution, of authorized projects for inclusion in deauthorization list; submittal of report and reasons for exclusion recommendations to Congressional Committees.

The Secretary of the Army, acting through the Chief of Engineers, shall, on request by resolution of the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, review authorized projects for inclusion in the list of projects provided for in subsection (a) of this section. If any project so reviewed is not included in any of the first three lists submitted to the Congress after the date of the resolution directing the review of the project, a report on the review together with the reasons for not recommending deauthorization, shall be submitted to the Committees on Public Works of the Senate and House of Representatives not later than the date of the third list submitted to Congress after the date of such resolution. (Pub. L. 93–251, title I, § 12, Mar. 7, 1974, 88 Stat. 16.)

ACQUISITION OF LAND AND MATERIALS

§ 596. Repealed. Pub. L. 91–646, title III, § 306, Jan. 2, 1971, 84 Stat. 1907.

Section, Pub. L. 86–645, title III, § 301, July 14, 1960, 74 Stat. 502, declared the policy of Congress with respect to payment of just and reasonable consideration to owners and tenants whose property is acquired for public works projects and payment of a purchase price in negotiation for such property which will consider such congressional policy. See provisions of Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, classified to chapter 61 (section 4601 et seq.) of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF REPEAL

Repeal of section not applicable to any State so long as sections 4630 and 4655 of Title 42 are not applicable in such State; but such sections completely applicable to all States after July 1, 1972, but until such date applicable to a State to extent the State is able under its laws to comply with such sections, see section 221 of Pub. L. 91–646, set out as note under section 4601 of Title 42, The Public Health and Welfare.

SAVINGS PROVISION

Any rights or liabilities existing under provisions repealed by section 306 of Pub. L. 91–646 as not affected by such repeal, see section 306 of Pub. L. 91–646, set out in part as a note under section 4651 of Title 42, The Public Health and Welfare.

Chapter 13.—MISSISSIPPI RIVER COMMISSION

§ 642. Appointment of commissioners; vacancies; chairman; tenure of office.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 647. Mississippi River survey.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

Chapter 15.—FLOOD CONTROL

Sec.

701b–11. Flood protection projects [New].
(a) General considerations; nonstructural alternatives.
(b) Non-Federal participation through nonstructural alternatives; limitation.

§ 701. Flood control generally.

TRANSFER OF FUNCTIONS

The Office of Emergency Preparedness, including the offices of Director, Deputy Director, Assistant Directors, and Regional Directors, was abolished and all functions vested by law in the Office of Emergency Preparedness or the Director of the Office of Emergency Preparedness were transferred to the President of the United States by sections 1 and 3(a)(1) of 1973 Reorg. Plan No. 1, effective July 1, 1973, set out in the Appendix to Title 5, Government Organization and Employees.

§ 701a. Same; declaration of policy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 701s of this title.

§ 701b–11. Flood protection projects.

(a) General considerations; nonstructural alternatives.

In the survey, planning, or design by any Federal agency of any project involving flood protection, consideration shall be given to nonstructural alternatives to prevent or reduce flood damages including, but not limited to, floodproofing of structures; flood plain regulation; acquisition of flood plain lands for recreational, fish and wildlife, and other public purposes; and relocation with a view toward formulating the most economically, socially, and environmentally acceptable means of reducing or preventing flood damages.

(b) Non-Federal participation through nonstructural alternatives; limitation.

Where a nonstructural alternative is recommended, non-Federal participation shall be comparable to the value of lands, easements, and rights-of-way which would have been required of non-Federal interests under section 701c of this title, for structural protection measures, but in no event shall exceed 20 per centum of the project costs. (Pub. L. 93–251, title I, § 73, Mar. 7, 1974, 88 Stat. 32.)

§ 701c. Rights-of-way, easements, etc.; acquisition by local authorities; maintenance and operation; protection of United States from liability for damages; requisites to run-off and water-flow retardation and soil erosion prevention assistance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 701b–11, 701s of this title.

§ 701g. Removal of obstructions; clearing channels.

The Secretary of the Army is authorized to allot not to exceed $5,000,000 from any appropriations heretofore or hereafter made for any one fiscal year for flood control, for removing accumulated snags and other debris, and clearing and straightening the channel in navigable streams and tributaries thereof, when in the opinion of the Chief of Engineers such work is advisable in the interest of flood control: *Provided*, That not more than $250,000 shall

be expended for this purpose for any single tributary from the appropriations for any one fiscal year. (As amended Mar. 7, 1974, Pub. L. 93–251, title I, § 26, 88 Stat. 20.)

AMENDMENTS

1974—Pub. L. 93–251 increased the fiscal year authorization from $2,000,000 to $5,000,000 and the single tributary limitation from $100,000 to $250,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 701b–4, 702a–12 of this title.

§ 701n. Flood emergency preparation; authorized expenditures.

There is authorized an emergency fund to be expended in flood emergency preparation, in flood fighting and rescue operations, or in the repair or restoration of any flood control work threatened or destroyed by flood, including the strengthening, raising, extending, or other modification thereof as may be necessary in the discretion of the Chief of Engineers for the adequate functioning of the work for flood control; in the emergency protection of federally authorized hurricane or shore protection being threatened when in the discretion of the Chief of Engineers such protection is warranted to protect against imminent and substantial loss to life and property; in the repair and restoration of any federally authorized hurricane or shore protective structure damaged or destroyed by wind, wave, or water action of other than an ordinary nature when in the discretion of the Chief of Engineers such repair and restoration is warranted for the adequate functioning of the structure for hurricane or shore protection. The Chief of Engineers, in the exercise of his discretion, is further authorized to provide emergency supplies of clean drinking water, on such terms as he determines to be advisable, to any locality which he finds is confronted with a source of contaminated drinking water causing or likely to cause a substantial threat to the public health and welfare of the inhabitants of the locality. The appropriation of such moneys for the initial establishment of this fund and for its replenishment on an annual basis, is authorized: *Provided*, That pending the appropriation of sums to such emergency fund, the Secretary of the Army may allot, from existing flood-control appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriation herein authorized when made. The Chief of Engineers is authorized, in the prosecution of work in connection with rescue operations, or in conducting other flood emergency work, to acquire on a rental basis such motor vehicles, including passenger cars and buses, as in his discretion are deemed necessary. (As amended Mar. 7, 1974, Pub. L. 93–251, title I, § 82, 88 Stat. 34.)

AMENDMENTS

1974—Pub. L. 93–251 deleted limitation of emergency fund to $15,000,000, provided for emergency supplies of clean drinking water to localities confronted with source of contaminated drinking water, and substituted in the proviso "of sums to such emergency fund" for "of said sum".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 702a–12 of this title.

§ 701r. Protection of highways, bridge approaches, public works, and nonprofit public services.

The Secretary of the Army is authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed $10,000,000 per year, for the construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent damage to highways, bridge approaches, and public works, churches, hospitals, schools, and other nonprofit public services, when in the opinion of the Chief of Engineers such work is advisable: *Provided*, That not more than $250,000 shall be allotted for this purpose at any single locality from the appropriations for any one fiscal year. (As amended Mar. 7, 1974, Pub. L. 93–251, title I, § 27, 88 Stat. 20.)

AMENDMENTS

1974—Pub. L. 93–251 increased annual allotment authorization to $10,000,000 from $1,000,000 and limitation of any single locality to $250,000 from $50,000 and substituted "construction, repair, restoration, and modification of emergency streambank and shoreline protection works to prevent flood damages to highways, bridge approaches, and public works, churches, hospitals, schools, and other nonprofit public services," for "construction of emergency bank-protection works to prevent flood damages to highways, bridge approaches, and public works,".

§ 701r–1. Utilization of public roads.

* * * * *

(c) Replacement roads; construction to higher standards.

For water resources projects to be constructed in the future, when the taking by the Federal Government of an existing public road necessitates replacement, the substitute provided will, as nearly as practicable, serve in the same manner and reasonably as well as the existing road. The head of the agency concerned is authorized to construct such substitute roads to the design standards which the State or owning political division would use in constructing a new road under similar conditions of geography and under similar traffic loads (present and projected). In any case where a State or political subdivision thereof requests that such a substitute road be constructed to a higher standard than that provided for in the preceding provisions of this subsection, and pays, prior to commencement of such construction, the additional costs involved due to such higher standard, such agency head is authorized to construct such road to such higher standard. Federal costs under the provisions of this subsection shall be part of the nonreimbursable project costs. (As amended Pub. L. 93–251, title I, § 13, Mar. 7, 1974, 88 Stat. 17.)

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–251 lower cased the word "agency" in two instances, and substituted "to the design standards which the State or owning political division would use in constructing a new road under similar conditions of geography and under similar traffic loads (present and projected)." for "to design standards comparable to those of the State, or, where applicable State standards do not exist, those of the owning political division in which the road is located, for roads of the same classification as the road being replaced. The traffic existing at the time of the taking shall be used in the determination of the classification."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 43 section 616qqq.

§ 701s. Small flood-control projects; appropriations; amount limitation for single locality; conditions.

The Secretary of the Army is authorized to allot from any appropriations heretofore or hereafter made for flood control, not to exceed $30,000,000 for any one fiscal year, for the construction of small projects for flood control and related purposes not specifically authorized by Congress, which come within the provisions of section 701a of this title, when in the opinion of the Chief of Engineers such work is advisable. The amount allotted for a project shall be sufficient to complete Federal participation in the project. Not more than $1,000,000 shall be allotted under this section for a project at any single locality, except that not more than $2,000,000 shall be allotted under this section for a project at a single locality if such project protects an area which has been declared to be a major disaster area pursuant to the Disaster Relief Act of 1966 or the Disaster Relief Act of 1970 in the five-year period immediately preceding the date the Chief of Engineers deems such work advisable. The provisions of local cooperation specified in section 701c of this title shall apply. The work shall be complete in itself and not commit the United States to any additional improvement to insure its successful operation, except as may result from the normal procedure applying to projects authorized after submission of preliminary examination and survey reports. (As amended Mar. 7, 1974, Pub. L. 93–251, title I, § 61, 88 Stat. 29.)

REFERENCES IN TEXT

Disaster Relief Act of 1966, referred to in the text, was classified to sections 1855aa to 1855ll of Title 42, The Public Health and Welfare, was repealed by Pub. L. 91–606, title III, § 302(1), Dec. 31, 1970, 84 Stat. 1759, and is now covered by chapter 58 (§ 4401 et seq.) of Title 42.

Disaster Relief Act of 1970, referred to in the text, is classified to chapter 58 (§ 4401 et seq.) of Title 42.

AMENDMENTS

1974—Pub. L. 93–251, in revising the provisions, increased fiscal year allotment to $30,000,000 from $25,000,000 and required allotment of $2,000,000 for a project at a single locality if such locality protects an area declared to be a major-disaster area pursuant to Disaster Relief Act of 1966 or Disaster Relief Act of 1970 in five-year period immediately preceding the date the Chief of Engineers deems such work advisable.

§ 702e. Same; maps for project; preparation.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 706. Weather Bureau; current information; appropriation.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 707. Sumner Dam and Lake Sumner; declaration of purpose; report to Congress; appropriation.

The Sumner Dam and Lake Sumner on the Pecos River, New Mexico, is authorized and declared to be for the purposes of controlling floods, regulating the flow of the Pecos River, providing for storage and for delivery of stored waters, for the reclamation of lands, and other beneficial uses, and said dam and reservoir shall be used, first, for irrigation; second, for flood control and river regulation; and third, for other purposes. The Chief of Engineers and the Secretary of the Army are directed to report to the Congress the amount of the total cost of said Sumner Dam and Lake Sumner which is properly allocable to flood control. The appropriation and transfer of such amount from the general fund of the Treasury to the reclamation fund, for credit by reduction of the maximum obligation of the Carlsbad Irrigation District to repay the total cost thereof, is authorized. (As amended Oct. 17, 1974, Pub. L. 93–447, 88 Stat. 1363.)

ALAMOGORDO DAM AND RESERVOIR REDESIGNATED AS SUMNER DAM AND LAKE SUMNER

Pub. L. 93–447 provided: "That the Alamogordo Dam and Reservoir, New Mexico, referred to in the Act of August 11, 1939 (53 Stat. 1414) [which enacted this section], are redesignated as Sumner Dam and Lake Sumner, respectively. Any law, regulation, map, document, record, or other paper of the United States in which such dam or reservoir is referred to shall be held to refer to such dam as Sumner Dam or such reservoir as Lake Sumner."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 701b–4 of this title.

§ 709a. Compilation and dissemination of information on floods and flood damages; advice; authorization for expenditures.

* * * * *

(b) The Secretary of the Army is authorized to expend not to exceed $15,000,000 per fiscal year for the compilation and dissemination of information under this section. (As amended Pub. L. 93–251, title I, § 64, Mar. 7, 1974, 88 Stat. 30.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–251 increased fiscal year expenditure authorization from $11,000,000 to $15,000,000.

Chapter 16.—LIGHTHOUSES

Sec.
776. Same; payment out of Civil Service retirement and disability fund [New].

§ 763. Retirement for age of officers and employees generally; retirement pay; waiver of retirement pay.

All officers and employees engaged in the field service or on vessels of the Lighthouse Service, except persons continuously employed in district offices or shop, who (1) shall have reached the age of fifty-five years, after having been thirty years in the active service of the Government, (2) shall have reached the age of sixty-two years, after having been twenty-five years in the active service of the Government, or (3) are involuntarily separated from further performance of duty, except by removal for cause on charges of misconduct or delinquency, after completing twenty-five years in the active service of the Government, or after completing twenty years of such service and after reaching the age of fifty years, may at their option be retired from further performance of duty; and all such officers and employees who shall have reached the age of seventy years shall be compulsorily retired from further performance of duty: *Provided*, That the annual compensation of persons so retired shall be a sum equal to one-fortieth of the average annual pay

received for the last three years of service for each year of active service in the Lighthouse Service, or in a department or branch of the Government having a retirement system, not to exceed in any case thirty-fortieths of such average annual pay received: *Provided further,* That the retirement pay computed under the preceding proviso for any such officer or employee retiring under clause (3) shall be reduced by one-sixth of 1 per centum for each full month the officer or employee is under fifty-five years of age at the date of retirement: *Provided further,* That such retirement pay shall not include any amount on account of subsistence or other allowance: *Provided further,* That the retirement provisions and pay shall not apply to persons in the field service of the Lighthouse Service whose duties do not require substantially all their time. Any person entitled to retirement pay under this section may decline to accept all or any part of such retirement pay by a waiver signed and filed with the Secretary of the Treasury. Such waiver may be revoked in writing at any time, but no payment of the retirement pay waived shall be made covering the period during which such waiver was in effect. (As amended Oct. 2, 1972, Pub. L. 92–455, § 6(a), 86 Stat. 761.)

AMENDMENTS

1972—Pub. L. 92–455 inserted cl. (3), substituted "five" for "three" years of service in first proviso, and added proviso for reduction of retirement pay computed under cl. (3) by one-sixth of 1 per centum for each full month the officer or employee is under fifty-five years of age at the date of retirement.

1967—Pub. L. 90–164 lowered the voluntary retirement age from sixty to fifty-five years for those officers and employees having thirty years of active service.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 6(b) of Pub. L. 92–455 provided that: "The amendments made by subsection (a) of this section [to this section] shall apply with respect to officers and employees to which such section 6 [amending this section] applies who are involuntarily separated or retired on or after the date of the enactment of this Act [Oct. 2, 1972]."

INCREASE OF PAY OF PERSONS RETIRED ON OR BEFORE OCTOBER 1, 1972

Pub. L. 94–178, Dec. 23, 1975, 89 Stat. 1033, provided: "That the annual rate of retired pay received by a person under section 6 of the Act of June 20, 1918, as amended and supplemented (33 U.S.C. 736–765), who was retired on or before October 1, 1972, shall, effective on the first day of the calendar month following enactment of this Act [Dec. 23, 1975], be increased by $270."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 763–1, 763–2, 763a–1, 765, 766, 771 of this title; title 14 section 433; title 42 section 253b.

§ 763c. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

Section, act July 1, 1944, ch. 373, title XIII, § 1310(b), formerly title VI, § 610(b), 58 Stat. 714, renumbered title VII, § 710(b), by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, renumbered title VIII, § 810(b), by act July 30, 1956, ch. 779, § 3(b), 70 Stat. 721, renumbered title IX, § 910(b), by Pub. L. 88–581, § 4(b), Sept. 4, 1964, 78 Stat. 919, renumbered title X, § 1010(b), by Pub. L. 89–239, § 3(b), Oct. 6, 1965, 79 Stat. 931, renumbered title XI, § 1110(b) by Pub. L. 91–572, § 6(b), Dec. 24, 1970, 84 Stat. 1506, renumbered title XII, § 1210(b) by Pub. L. 92–294, § 3(b), May 16, 1972, 86 Stat. 137, renumbered title XIII, § 1310(b), by Pub. L. 93–154, § 2(b)(2), Nov. 16, 1973, 87 Stat. 604, made provision for hospital facilities for officers and employees.

§ 771. Benefits for widows of Lighthouse Service Personnel; death of employee during retirement; amount of payment.

INCREASE IN WIDOWS BENEFITS AND EFFECTIVE DATE OF INCREASE

Pub. L. 94–170, Dec. 23, 1975, 89 Stat. 1022, provided: "That the benefits payable under section 1 or section 2 of the Act of August 19, 1950 (64 Stat. 465, 466), as amended (33 U.S.C. 771, 772) shall, effective on the first day of the calendar month following enactment of this Act [Dec. 23, 1975], be increased by $26 per month.

"SEC. 2. The increases under this Act shall apply to benefits which commence before, on, or after the date of enactment of this Act [Dec. 23, 1975], but no increase in benefits shall be paid for any period prior to the date of enactment of this Act [Dec. 23, 1975], or the date on which the eligibility for benefits commences, whichever is later."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

§ 772. Same; death of employee due to non-service-connected causes after 15 years' service; amount of payment.

INCREASE IN WIDOWS BENEFITS AND EFFECTIVE DATE OF INCREASE

For 1975 increase in widows benefits under this section and section 771 of this title, and effective date of such increase, see Pub. L. 94–170, Dec. 23, 1975, 89 Stat. 1022, set out as a note under section 771 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 776 of this title.

§§ 773 to 775.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 776 of this title.

§ 776. Same; payment out of Civil Service retirement and disability fund.

Annuities authorized by sections 771 to 775 of this title may, on and after August 21, 1974, be paid out of the Civil Service retirement and disability fund. (Pub. L. 94–91, title IV, § 400, Aug. 9, 1975, 89 Stat. 449.)

SIMILAR PROVISIONS

Section is from the Treasury, Postal Service, and General Government Appropriation Act, 1976, Pub. L. 94–91. Similar provisions were contained in the following prior Appropriation Acts:

1974—Pub. L. 93–381, title IV, § 400, Aug. 21, 1974, 88 Stat. 620.

1973—Pub. L. 93–143, title IV, § 400, Oct. 30, 1973, 87 Stat. 517.

Chapter 17.—COAST AND GEODETIC SURVEY

GENERAL PROVISIONS

Sec.
857–6. National Advisory Committee on Oceans and Atmosphere; establishment [New].
857–7. Same; membership [New].
(a) Appointment; representation.
(b) Term of office.
(c) Term of original appointees.
(d) Vacancies; service beyond term.
(e) Chairman; Vice Chairman.
857–8. Same; senior policy officials as Federal observers and aids [New].
857–9. Same; duties; reports to President and Congress [New].
857–10. Same; compensation and travel expenses [New].
857–11. Same; Department of Commerce and other Federal agencies, assistance [New].
857–12. Same; authorization of appropriations [New].

GENERAL PROVISIONS

CHANGE OF NAME

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35 F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

TRANSFER OF FUNCTIONS

The Environmental Science Services Administration in the Department of Commerce, including the offices of Administrator and Deputy Administrator thereof, were abolished by Reorg. Plan No. 4, of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5, Government Organization and Employees, which created the National Oceanic and Atmospheric Administration in the Department of Commerce and transferred the personnel, property, records, and unexpended balances of funds of the Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. The components of the Environmental Science Services Administration thus transferred included the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, the National Environmental Satellite Center, and the ESSA Research Laboratories.

§ 853. Power to settle claims.

The Director of the Coast and Geodetic Survey, subject to the approval of the Secretary of Commerce, is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed $500, occasioned, subsequent to June 5, 1920, by acts for which the Coast and Geodetic Survey shall be found to be responsible. (As amended Jan. 2, 1975, Pub. L. 93–608, § 1(4), 88 Stat. 1967.)

AMENDMENTS

1975—Pub. L. 93–608 struck out reporting requirement to Congress of amounts ascertained and determined due for payment as legal claims out of Congressional appropriations.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§§ 853a to 853*l*, 853*o* to 853r, 853t to 854a–2, 855, 856, 857.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the notes under these sections in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 857–6. National Advisory Committee on Oceans and Atmosphere; establishment.

There is hereby established a committee of twenty-five members to be known as the National Advisory Committee on Oceans and Atmosphere (hereafter referred to in sections 857–6 to 857–12 of this title as the "Advisory Committee"). (Pub. L. 92–125, § 1, Aug. 16, 1971, 85 Stat. 344.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–11, 857–12 of this title.

§ 857–7. Same; membership.

(a) Appointment; representation.

The members of the Advisory Committee, who may not be full-time officers or employees of the United States, shall be appointed by the President and shall be drawn from State and local government, industry, science, and other appropriate areas.

(b) Term of office.

Except as provided in subsections (c) and (d) of this section, members shall be appointed for terms of three years.

(c) Term of original appointees.

Of the members first appointed, as designated by the President at the time of appointment—

(1) nine shall be appointed for a term of one year,

(2) eight shall be appointed for a term of two years, and

(3) eight shall be appointed for a term of three years.

(d) Vacancies; service beyond term.

Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(e) Chairman; Vice Chairman.

The President shall designate one of the members of the Advisory Committee as the Chairman and one of the members as the Vice Chairman. The Vice Chairman shall act as Chairman in the absence or incapacity of, or in the event of a vacancy in the office of, the Chairman. (Pub. L. 92–125, § 2, Aug. 16, 1971, 85 Stat. 344.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–11, 857–12 of this title.

§ 857–8. Same; senior policy officials as Federal observers and aids.

Each department and agency of the Federal Government concerned with marine and atmospheric matters shall designate a senior policy official to participate as observer in the work of the Advisory Committee and to offer necessary assistance. (Pub. L. 92–125, § 3, Aug. 16, 1971, 85 Stat. 344.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–11, 857–12 of this title.

§ 857–9. Same; duties; reports to President and Congress.

The Advisory Committee shall (1) undertake a continuing review of national ocean policy, coastal zone management, and the progress of the marine and atmospheric science and service programs of the United States, and (2) advise the Secretary of Commerce with respect to the carrying out of the purpose of the National Oceanic and Atmospheric Administration. The Advisory Committee shall submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine and atmospheric activities and shall submit such other

reports as may from time to time be requested by the President and the Congress. Each such report shall be submitted to the Secretary of Commerce who shall, within 90 days after receipt thereof, transmit copies to the President and to the Congress, with his comments and recommendations. The comprehensive annual report required herein shall be submitted on or before June 30 of each year, beginning June 30, 1972. (Pub. L. 92–125, § 4, Aug. 16, 1971, 85 Stat. 344, amended Pub. L. 94–69, § 2, Aug. 5, 1975, 89 Stat. 384.)

AMENDMENTS

1975—Pub. L. 94–69 added "national ocean policy, coastal zone management, and" following "review of", and substituted "requested by the President and the Congress" for "requested by the President".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–11, 857–12 of this title.

§ 857–10. Same; compensation and travel expenses.

Members of the Advisory Committee shall, while serving on business of the Committee, be entitled to receive compensation at rates not to exceed $100 per diem, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of Title 5 for persons in Government service employed intermittently. (Pub. L. 92–125, § 5, Aug. 16, 1971, 85 Stat. 344.)

REFERENCES IN TEXT

Section 5703 of Title 5, referred to in text, was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–11, 857–12 of this title.

§ 857–11. Same; Department of Commerce and other Federal agencies, assistance.

The Secretary of Commerce shall make available to the Advisory Committee such staff, information, personnel and administrative services and assistance as it may reasonably require to carry out its activities. The Advisory Committee is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information and assistance it deems necessary to carry out its functions under sections 857–6 to 857–12 of this title; and each such department, agency, and instrumentality is authorized to cooperate with the Advisory Committee and, to the extent permitted by law, to furnish such information and assistance to the Advisory Committee upon request made by its Chairman, without reimbursement for such services and assistance. (Pub. L. 92–125, § 6, Aug. 16, 1971, 85 Stat. 345.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–12 of this title.

§ 857–12. Same; authorization of appropriations.

There are hereby authorized to be appropriated to the Secretary of Commerce such sums as may be necessary for expenses incident to the administration of sections 857–6 to 857–12 of this title, not to exceed the following amounts: (1) $400,000 for the fiscal year ending June 30, 1973, and for each of the 2 fiscal years immediately thereafter; (2) $445,000 for the fiscal year ending June 30, 1976; (3) $111,250 for the transitional period (July 1 through September 30, 1976); and (4) $445,000 for the fiscal year ending September 30, 1977. (Pub. L. 92–125, § 7, Aug. 16, 1971, 85 Stat. 345, amended Pub. L. 92–567, Oct. 25, 1972, 86 Stat. 1181; Pub. L. 94–69, § 1, Aug. 5, 1975, 89 Stat. 384.)

AMENDMENTS

1975—Pub. L. 94–69 substituted provisions authorizing to be appropriated not to exceed $445,000 for the fiscal year ending June 30, 1976, $111,250 for the transition period (July 1 through Sept. 30, 1976), and $445,000 for the fiscal year ending Sept. 30, 1977 for provisions authorizing to be appropriated for succeeding fiscal years only such sums as may be authorized by law.

1972—Pub. L. 92–567 deleted appropriations authorization of $200,000 for fiscal year ending June 30, 1972, substituted authorization of not to exceed $400,000 for fiscal years ending June 30, 1973, 1974, and 1975, for prior authorization of $200,000 for fiscal years ending June 30, 1973, and succeeding fiscal years, and provided for such sums as may be authorized by law for succeeding fiscal years.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857–6, 857–11 of this title.

§ 857a. Rights, benefits, privileges, and immunities; exercise of authority by Secretary of Commerce or designee.

(a) The rules of law that apply to the Armed Forces under the following provisions of Title 10, including changes in those rules made after August 10, 1956, apply also to the Coast and Geodetic Survey:

* * * * *

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

* * * * *

(As amended Sept. 21, 1972, Pub. L. 92–425, § 5, 86 Stat. 713.)

AMENDMENTS

1972—Subsec. (a). Pub. L. 92–425 substituted "Retired Serviceman's Family Protection Plan; Survivor Benefit Plan" for "Annuities Based on Retired or Retainer Pay" in cl. (5).

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 858. Rules and regulations when cooperating with military departments.

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out in the credit to this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 864. Retirement of officers generally.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the note under this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 868a. Purchase of supplies by personnel from Army, Navy, or Marine Corps.

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out in the credit to this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§§ 873 to 876.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the notes under these sections in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

SURVEYS

§§ 883a to 883f, 883h to 884.

TRANSFER OF FUNCTIONS

The effective date of Reorg. Plan No. 4 of 1970, referred to in the notes under these sections in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

§ 888. Report to Congress on expenditures.

CODIFICATION

Section, R. S. §§ 264, 4690; acts Feb. 14, 1903, ch. 552, §§ 4, 10, 32 Stat. 826, 829; Mar. 4, 1913, ch. 141, § 1, 37 Stat. 736; June 5, 1920,, ch. 235, § 1, 41 Stat. 929, relating to an annual statement on coast surveys by the Coast and Geodetic Survey, was partially repealed by acts May 29, 1928, ch. 901, § 1 (104), 45 Stat. 994; Aug. 7, 1946, ch. 770, § 1 (5), 60 Stat. 866; and Aug. 30, 1954, ch. 1076, § 1 (13), 68 Stat. 967. The provision relating to an annual statement of all expenditures by Coast and Geodetic Survey was omitted as covered by section 1519 of Title 15, Commerce and Trade.

Chapter 18.—LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION

Sec.

948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 8171; title 43 section 1333; title 50 App. section 2003.

CHAPTER REFERRED TO IN D.C. CODE

This chapter is referred to in section 36–501 of the District of Columbia Code.

§ 901. Short title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 22 of Pub. L. 92–576, Oct. 27, 1972, 86 Stat. 1265, provided that: "The amendments made by this Act [see Short Title note under this section] shall become effective thirty days after the date of enactment of this Act [Oct. 27, 1972]."

EFFECTIVE DATE

Section 52, formerly 51, of act Mar. 4, 1927, renumbered Oct. 27, 1972, Pub. L. 92–576, § 19, 86 Stat. 1263, provided that: "Sections 39 to 48, 50 to 62 [50 to 52, formerly 49 to 51, renumbered Pub. L. 92–576, § 19], inclusive [sections 939 to 948, 949, and 950 of this title], shall become effective upon the passage of this Act [Mar. 4, 1927], and the remainder of this Act shall become effective on July 1, 1927."

SHORT TITLE OF 1972 AMENDMENTS

Section 1 of Pub. L. 92–576, Oct. 27, 1972, 86 Stat. 1251 provided: "That this Act [which enacted section 948a and amended sections 902, 903, 905–910, 912–914, 917, 919, 921, 921a, 923, 927, 928, 933, 935, 939, 940, and 944 of this title, and enacted and amended provisions set out as notes under this section] may be cited as the 'Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 902. Definitions.

When used in this chapter—

* * * * *

(3) The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

* * * * *

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" includes stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) of this section.

* * * * *

(16) The terms "widow or widower" includes only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(18) The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body.

(C) a school or college or university not so accredited but whose credits are accepted, on

transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred fom an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary,

but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this chapter during a period of service in the Armed Forces of the United States.

(19) The term "national average weekly wage" means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term "Board" shall mean the Benefits Review Board.

(21) The term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this chapter suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter,

(As amended Oct. 27, 1972, Pub. L. 92–576, §§ 2(a), (b), 3, 5(b), 15(c), 18(b), 20(c)(1), 86 Stat. 1251 1253, 1262, 1263, 1265.)

AMENDMENTS

1972—Subd. (3). Pub. L. 92–576, § 2(a), defined "employee" to mean any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker and substituted "or" or for "nor" preceding "any person engaged by the master".

Subd. (4). Pub. L. 92–576, § 2(b), defined "employer" to include an employer any of whose employees are employed in maritime employment upon the navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel.

Subd. (14). Pub. L. 92–576, § 3(b), defined "child, grandchild, brother, and sister" to include a student as defined in par. (19) of this section.

Subd. (16). Pub. L. 92–576, § 20(c)(1), consolidated provisions of former sub. (16) definition of "widow" and former subd. (17) definition of "widower" in one definition of "widow or widower"; and in redefining "widower", substituted provision for decedent's husband living with or dependent upon wife for support at time of her death, for prior provision for decedent's husband living with and dependent upon wife for support at time of her death, and included decedent's husband living apart from wife or justifiable cause or by reason of her desertion at time of her death.

Subd. (17). Pub. L. 92–576, § 20(c)(1), redesignated former subsec. (18) definition of "adoption" or "adopted" as subd. (17). Former subd. (17) definition of "widower" incorporated in subd. (16).

Subd. (18). Pub. L. 92–576, §§ 3(a), 20(c)(1), added par. (19) definition of "student" and redesignated such subd. (19) as subd. (18). Former subd. (18) definition of "adoption" or "adopted" redesignated subd. (17).

Subd. (19). Pub. L. 92–576, §§ 5(b), 20(c)'1), added par. (20) definition of "national average weekly wage" and redesignated such subd. (20) as subd. (19). Former subd. (19) definition of "student" redesignated subd. (18).

Subd. (20). Pub. L. 92–576, §§ 15(c), 20(c)(1), added par. (21) definition of "Board" and redesignated such subd. (21) as subd. (20). Former subd. (20) definition of "national average weekly wage" redesignated subd. (19).

Subd. (21). Pub. L. 92–576, §§ 18(b), 20(c)(1), added par. (22) definition of "vessel" and redesignated such subd. (22) as subd. (21). Former subd. (21) definition of "Board" redesignated subd. (20).

Subd. (22). Pub. L. 92–576, §§ 3(a), 5(b), 15(c), 18(b), 20(c)(1), redesignated former subd. 19 definition of "singular" as subds. (20), (21), (22), (23), and (22) again. Former subd. (22) definition of "vessel" redesignated subd. (21).

EFFECTIVE DATE OF 1972 AMENDMENT

Section 20(c)(3) of Pub. L. 92–576 provided that: "The amendments made by this subsection [which enacted subd. (16), struck out subd. (17), and redesignated as subds. (17) to (22) paragraphs previously designated as (18) to (23) of this section and substituted "widow or widower" for "surviving wife or dependent husband" wherever appearing in section 909 of this title] shall apply only with respect to deaths or injuries occurring after the enactment of this Act. [Oct. 27, 1972]."

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8171, 8172, 8173; title 30 section 932.

§ 903. Coverage.

(a) Compensation shall be payable under this chapter in respect of disability or death of an employee but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel). No compensation shall be payable in respect of the disability or death of—

(1) A master or member of a crew of any vessel or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net; or

* * * * *

(As amended Oct. 22, 1972, Pub. L. 92–576 §§ 2(c), 21, 86 Stat. 1251, 1265.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576, § 2(c), substituted provisions respecting coverage of injuries occurring upon navigable waters of the United States, including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel, for prior provisions respecting coverage of

such injuries upon navigable waters and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.

Subd. (a)(1). Pub. L. 92–576, § 21, substituted "or" for "nor" preceding "any person engaged by the master".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8171; title 30 section 932.

§ 904. Liability for compensation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 905. Exclusiveness of liability.

(a) The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under the chapter, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee.

(b) In the event of injury to a person covered under this chapter caused by the negligence of a vessel, then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel as a third party in accordance with the provisions of section 933 of this title, and the employer shall not be liable to the vessel for such damages directly or indirectly and any agreements or warranties to the contrary shall be void. If such person was employed by the vessel to provide stevedoring services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing stevedoring services to the vessel. If such person was employed by the vessel to provide ship building or repair services, no such action shall be permitted if the injury was caused by the negligence of persons engaged in providing ship building or repair services to the vessel. The liability of the vessel under this subsection shall not be based upon the warranty of seaworthiness or a breach thereof at the time the injury occurred. The remedy provided in this subsection shall be exclusive of all other remedies against the vessel except remedies available under this chapter. (As amended Oct. 27, 1972, Pub. L. 92–576, § 18(a), 86 Stat. 1263.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 designated existing provisions as subd. (a) and substituted "the chapter" for "this chapter".

Subd. (b). Pub. L. 92–576 added subd. (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

§ 906. Time for commencement of compensation.

(a) No compensation shall be allowed for the first three days of the disability, except the benefits provided for in section 907 of this title: *Provided, however,* That in case the injury results in disability of more than fourteen days the compensation shall be allowed from the date of the disability.

(b)(1) Except as provided in subsection (c) of this section, compensation for disability shall not exceed the following percentages of the applicable national average weekly wage as determined by the Secretary under paragraph (3):

(A) 125 per centum or $167, whichever is greater, during the period ending September 30, 1973.

(B) 150 per centum during the period beginning October 1, 1973, and ending September 30, 1974.

(C) 175 per centum during the period beginning October 1, 1974, and ending September 30, 1975.

(D) 200 per centum beginning October 1, 1975.

(2) Compensation for total disability shall not be less than 50 per centum of the applicable national average weekly wage determined by the Secretary under paragraph (3), except that if the employee's average weekly wages as computed under section 910 of this title are less than 50 per centum of such national average weekly wage, he shall receive his average weekly wages as compensation for total disability.

(3) As soon as practicable after June 30 of each year, and in any event prior to October 1 of such year, the Secretary shall determine the national average weekly wage for the three consecutive calendar quarters ending June 30. Such determination shall be the applicable national average weekly wage for the period beginning with October 1 of that year and ending with September 30 of the next year. The initial determination under this paragraph shall be made as soon as practicable after October 27, 1972.

(c) The maximum rate of compensation for a nonappropriated fund instrumentality employee shall be equal to 66⅔ per centum of the maximum rate of basic pay established for a Federal employee in grade GS–12 by section 5332 of Title 5, and the minimum rate of compensation for such an employee shall be equal to 66⅔ per centum of the minimum rate of basic pay established for a Federal employee in grade GS–2 by such section.

(d) Determinations under this subsection with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period. (As amended Oct. 27, 1972, Pub. L. 92–576, §§ 4, 5(a), 86 Stat. 1252.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576, § 4, substituted "fourteen days" for "twenty-eight days".

Subd. (b)–(d). Pub. L. 92–576, § 5(a) added subd. (b)–(d) and struck out former subd. (b) compensation for disability provisions which prescribed a $70 per week

limit, a $18 per week minimum for total disability, and provided that if the employee's average weekly wages, as computed under section 910 of this title, were less than $18 per week he should receive as compensation for total disability his average weekly wages.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 909, 910 of this title; title 42 sections 1652, 1702.

§ 907. Medical services and supplies.

(a) General requirement.

The employer shall furnish such medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus, for such period as the nature of the injury or the process of recovery may require.

(b) Physician selection; administrative supervision; change of physicians and hospitals.

The employee shall have the right to choose an attending physician authorized by the Secretary to provide medical care under this chapter as hereinafter provided. If, due to the nature of the injury, the employee is unable to select his physician and the nature of the injury requires immediate medical treatment and care, the employer shall select a physician for him. The Secretary shall actively supervise the medical care rendered to injured employees, shall require periodic reports as to the medical care being rendered to injured employees, shall have authority to determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished, and may, on his own initiative or at the request of the employer, order a change of physicians or hospitals when in his judgment such change is desirable or necessary in the interest of the employee. Change of physicians at the request of employees shall be permitted in accordance with regulations of the Secretary.

(c) Authorized physicians; designation in community; posting of names.

The Secretary may designate the physicians who are authorized to render medical care under the chapter. The names of physicians so designated in the community shall be made available to employees through posting or in such other form as the Secretary may prescribe..

(d) Request of treatment or services prerequisite to recovery of expenses; formal report of injury and treatment; suspension of compensation for refusal of treatment or examination; justification.

An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless he shall have requested the employer to furnish such treatment or services, or to authorize provision of medical or surgical services by the physician selected by the employee, and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless within ten days following the first treatment the physician giving such treatment furnish to the employer and the Secretary a report of such injury and treatment, on a form prescribed by the Secretary. The Secretary may, however, excuse the failure to furnish such report within ten days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(e) Physical examination; medical questions; report of physical impairment; review or reexamination; costs.

In the event that medical questions are raised in any case, the Secretary shall have the power to cause the employee to be examined by a physician employed or selected by the Secretary and to obtain from such physician a report containing his estimate of the employee's physical impairment and such other information as may be appropriate. Any party who is dissatisfied with such report may request a review or reexamination of the employee by one or more different physicians employed or selected by the Secretary. The Secretary shall order such review or reexamination unless he finds that it is clearly unwarranted. Such review or reexamination shall be completed within two weeks from the date ordered unless the Secretary finds that because of extraordinary circumstances a longer period is required. The Secretary shall have the power in his discretion to charge the cost of examination or review under this subsection to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk, in appropriate cases, or to the special fund in section 944 of this title.

(f) Same; place; exclusion of physicians other than examining physician of Secretary; good cause for conclusions of other physicians respecting impairment; examination by employer's physician; suspension of proceedings and compensation for refusal of examination.

An employee shall submit to a physical examination under subsection (e) of this section at such place as the Secretary may require. The place, or places, shall be designated by the Secretary and shall be reasonably convenient for the employee. No physician selected by the employer, carrier, or employee shall be present at or participate in any manner in such examination, nor shall conclusions of such physicians as to the nature or extent of impairment or the cause of impairment be available to the examining physician unless otherwise ordered, for good cause, by the Secretary. Such employer or carrier shall, upon request, be entitled to have the employee examined immediately thereafter and upon the same premises by a qualified physician or physicians in the presence of such physician as the

employee may select, if any. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee may refuse to submit to examination.

(g) Fees and charges for examinations, treatment, or service; limitation; regulations.

All fees and other charges for medical examinations, treatment, or service shall be limited to such charges as prevail in the community for such treatment, and shall be subject to regulation by the Secretary. The Secretary shall issue regulations limiting the nature and extent of medical expenses chargeable against the employer without authorization by the employer or the Secretary.

(h) Third party liability.

The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party not in the same employ, or that suit has been brought against such third party. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 933(b) of this title.

(i) Physicians' ineligibility for subsection (e) physical examinations and reviews because of workmen's compensation claim employment or fee acceptance or participation.

Unless the parties to the claim agree, the Secretary shall not employ or select any physician for the purpose of making examinations or reviews under subsection (e) of this section who, during such employment, or during the period of two years prior to such employment, has been employed by, or accepted or participated in any fee relating to a workmen's compensation claim from any insurance carrier or any self-insurer. (As amended Oct. 27, 1972, Pub. L. 92–576, § 6, 86 Stat. 1254.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 reenacted provisions without change.

Subd. (b). Pub. L. 92–576, in revising the text, substituted provisions for employee's choosing of an attending physician authorized by the Secretary, for prior provisions for such a choosing from a panel of physicians named by the employer and employer's selection of a physician for an employee when nature of injury requires immediate medical treatment and care for prior provisions for employer's selection of a physician from the panel; required Secretary's supervision of medical care rendered and periodic reports of medical care furnished; provided for initiative of the Secretary or the request of the employer for making change of hospitals or physicians and that the change be in the interest of the employee; provided for change of physicians pursuant to regulations of the Secretary; and deleted prior provision authorizing a second choice of a physician from the panel and for selection of physicians for specialized services.

Subd. (c). Pub. L. 92–576 substituted provisions respecting Secretary's designation of physicians in community authorized to render medical care and posting of their names for prior provisions respecting deputy commissioner's determination of size of panel of physicians (named by employer) following statutory criteria and approval of their qualifications, and requirement of posting of names and addresses of physicians so as to afford reasonable notice.

Subd. (d). Pub. L. 92–576 substituted the Secretary for the deputy commissioner as the person to exercise the various authorities, eliminated introductory provisions respecting employer's failure to maintain a panel of physicians for examination purposes or to permit the employee to choose an attending physician from the panel and employee's procurement of treatment and services and selection of a physician at expense of employer, decreased from twenty to ten days the period within which to make the formal report of injury and treatment, and authorized suspension of compensation for refusal to submit to an examination by a physician of the employer.

Subd. (e). Pub. L. 92–576 substituted provisions respecting physical examination to determine medical questions by a physician employed or selected by the Secretary, such physician's report of the physical impairment, review or reexamination of the employee, and the charging of costs to an employer, who is a self-insurer, or the insurance company carrying the risk or the special fund for prior provisions respecting examination of employee by a physician selected by the deputy commissioner (who shall submit a report of the disability) whenever the deputy commissioner was of the opinion that the employer's physician was partial in his estimate of the degree of permanent disability or the extent of temporary disability and charging cost of examination to the employer, if he was a self-insurer, or to the insurance company which was carrying the risk when the physician's estimate was not impartial.

Subd. (f). Pub. L. 92–576 added subd. (f). Former subd. (f) redesignated (g).

Subd. (g). Pub. L. 92–576 redesignated former subd. (f) as (g) and substituted "medical examinations, treatment, or service" for "such treatment or service", "charges as prevail in the community for such treatment" for "charges as prevail in the same community for similar treatment of injured persons of like standard of living", "regulation by the Secretary" for "regulation by the deputy commissioner", and prescribed issuance of regulations respecting medical expenses chargeable against employer. Former subd. (g) redesignated (h).

Subd. (h). Pub. L. 92–576 redesignated former subd. (g) as (h) and inserted the word "that" preceding "suit".

Subd. (i). Pub. L. 92–576 added subd. (i).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 906, 928, 933, 944 of this title; title 30 section 932.

§ 908. Compensation for disability.

Compensation for disability shall be paid to the employee as follows:

* * * * *

(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66⅔ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subdivision (b) or subdivision (e) of this section, respectively, and shall be paid to the employee, as follows:

* * * * *

(20) Disfigurement: Proper and equitable compensation not to exceed $3,500 shall be awarded for serious disfigurement of the face, head, or neck or of other normally exposed areas likely to handicap the employee in securing or maintaining employment.

* * * * *

(d)(1) If an employee who is receiving compensation for permanent partial disability pursuant to subdivision (c)(1)–(20) of this section dies from causes other than the injury, the total amount of

the award unpaid at the time of death shall be payable to or for the benefit of his survivors, as follows:

(A) if the employee is survived only by a widow or widower, such unpaid amount of the award shall be payable to such widow or widower,

(B) if the employee is survived only by a child or children, such unpaid amount of the award shall be paid to such child or children in equal shares,

(C) if the employee is survived by a widow or widower and a child or children, such unpaid amount of the award shall be payable to such survivors in equal shares,

(D) if there be no widow or widower and no surviving child or children, such unpaid amount of the award shall be paid to the survivors specified in section 909(d) of this title (other than a wife, husband, or child); and the amount to be paid each such survivor shall be determined by multiplying such unpaid amount of the award by the appropriate percentage specified in section 909 (d) of this title, but if the aggregate amount to which all such survivors are entitled, as so determined, is less than such unpaid amount of the award, the excess amount shall be divided among such survivors pro rata according to the amount otherwise payable to each under this subparagraph.

(2) Notwithstanding any other limitation in section 909 of this title, the total amount of any award for permanent partial disability pursuant to subdivision (c)(1)–(20) of this section unpaid at time of death shall be payable in full in the appropriate distribution.

(3) If an employee who was receiving compensation for permanent partial disability pursuant to subdivision (c)(21) of this section dies from causes other than the injury, his survivors shall receive death benefits as provided in section 909 (b)–(g) of this title, except that the percentage figures therein shall be applied to the weekly compensation payable to the employee at the time of his death multiplied by 1.5, rather than to his average weekly wages.

(4) An award for disability may be made after the death of the injured employee. Except where compensation is payable under subdivision (c)(21) of this section if there be no survivors as prescribed in this section, then the compensation payable under this subsection shall be paid to the special fund established under section 944(a) of this title.

* * * * *

(f) Injury increasing disability:

(1) In any case in which an employee having an existing permanent partial disability suffers injury, the employer shall provide compensation for such disability as is found to be attributable to that injury based upon the average weekly wages of the employee at the time of the injury. If following an injury falling within the provisions of subdivision (c)(1)–(20) of this section, the employee is totally and permanently disabled, and the disability is found not to be due solely to that injury, the employer shall provide compensation for the applicable prescribed period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater. In all other cases of total permanent disability or of death, found not to be due solely to that injury, of an employee having an existing permanent partial disability, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation payments or death benefits for one hundred and four weeks only. If following an injury falling within the provisions of subdivision (c)(1)–(20) of this section, the employee has a permanent partial disability and the disability is found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide compensation for the applicable period of weeks provided for in that section for the subsequent injury, or for one hundred and four weeks, whichever is the greater.

In all other cases in which the employee has a permanent partial disability, found not to be due solely to that injury, and such disability is materially and substantially greater than that which would have resulted from the subsequent injury alone, the employer shall provide in addition to compensation under paragraphs (b) and (e) of this section, compensation for one hundred and four weeks only.

(2) After cessation of the payments for the period of weeks provided for herein, the employee or his survivor entitled to benefits shall be paid the remainder of the compensation that would be due out of the special fund established in section 944 of this title.

* * * * *

(i)(A) Whenever the deputy commissioner determines that it is for the best interests of an injured employee entitled to compensation, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of section 915(b) and section 916 of this title: *Provided*, That if the employee should die from causes other than the injury after the deputy commissioner has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subsection, to and for the benefit of the persons enumerated in subsection (d) of this section.

(B) Whenever the Secretary determines that it is for the best interests of the injured employee entitled to medical benefits, he may approve agreed settlements of the interested parties, discharging the liability of the employer for such medical benefits, notwithstanding the provisions of section 916 of this title: *Provided*, That if the employee should die from causes other than the injury after the Secretary has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subdivision, to and for the benefit of the persons enumerated in subdivision (d) of this sectoin. (As amended Oct. 27, 1972, Pub. L. 92–576, §§ 5(c), 7, 9, 20(a), 86 Stat. 1253, 1255, 1257, 1264.)

AMENDMENTS

1972—Subd. (c)(20). Pub. L. 92–576, § 7, included compensation for serious disfigurement of the neck and other normally exposed areas likely to handicap the employee in securing or maintaining employment.

Subd. (d). Pub. L. 92–576, § 5(c), in revising the provisions substituted par. (1), subpars. (A)–(D) and pars. (2)–(4) for former provisions having an introductory par. and pars. (1)–(5), making the following changes:

Par. (1) incorporated former introductory par. providing for payments to survivors rather than for payments "for the benefit of the persons following"; subpar. (A) incorporated former par. (1) providing for a widower rather than dependent husband;

Subpar. (B) incorporated former par. (4), deleting reference to children under eighteen years, and providing for payment in equal shares;

Subpar. (C) incorporated former par. (2) for payment in equal shares rather than one half to surviving wife or dependent husband and one half to surviving child or children, substituting reference to "widow or widower" for "surviving wife or dependent husband", and deleting reference to "surviving" preceding "child or children";

Subpar. (D) added;

Pars. (2) and (3) added and former par. (3) deleted, such par. making it discretionary with the deputy commissioner to appoint a guardian for receipt of minor child's compensation; and

Par. (4) incorporated former par. (5), inserting therein provision for payment of compensation to the special fund except where payable under subd. (c)(21) of this section.

Subd. (f)(1). Pub. L. 92–576, § 9(a) added par. (1) and struck out former par. (1) which provided that if an employee received an injury which of itself would only cause permanent partial disability but which, combined with a previous disability did in fact cause permanent total disability, the employer should provide compensation only for the disability caused by the subsequent injury, and the proviso of such former par. (1) providing that in addition to compensation for the permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee should be paid the remainder of the compensation that would be due for permanent total disability and provision that the additional compensation should be paid out of the special fund established in section 944 of this title, now covered in par. (2) of this subsection.

Subd. (f)(2). Pub. L. 92–576, § 9, incorporated proviso of first sentence and second sentence of former par. (1) in provisions designated as par. (2) and struck out former par. (2) which stated that in all other cases in which, following a previous disability, an employee received an injury which was not covered by former subd. (1) of this subsection, the employer should provide compensation only for the disability caused by the subsequent injury, and in determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages should be such sum as would reasonably represent the earning capacity of the employee at the time of the subsequent injury, now covered in par. (1) of this subsection.

Subd. (i). Pub. L. 92–576, § 20(a), designated existing provisions as subpar. (A), substituted therein "Whenever" for "In cases under subdivision (c)(21) and subdivision (e) of this section, whenever", "he may approve" for "he may, with the approval of the Secretary, approve", and "deputy commissioner" for "Secretary", and deleted following "Provided," where first appearing "That the sum so agreed upon shall be payable in installments as provided in section 914(b) of this title, which installments shall be subject to commutation under section 914(j) of this title; And provided further," and added subpar. (B).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 944 of this title; title 30 section 932; title 42 sections 1652, 1702.

§ 909. Compensation for death.

If the injury causes death, or if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding $1,000.

(b) If there be a widow or widower and no child of the deceased, to such widow or widower 50 per centum of the average wages of the deceased, during widowhood, or dependent widowerhood, with two years' compensation in one sum upon remarriage; and if there be a surviving child or children of the deceased, the additional amount of 16⅔ per centum of such wages for each such child; in case of the death or remarriage of such widow or widower, if there be one surviving child of the deceased employee, such child shall have his compensation increased to 50 per centum of such wages, and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 50 per centum of such wages increased by 16⅔ per centum of such wages for each child in excess of one: *Provided,* That the total amount payable shall in no case exceed 66⅔ per centum of such wages. The deputy commissioner having jurisdiction over the claim may, in his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one surviving child of the deceased, but no widow or widower, then for the support of such child 50 per centum of the wages of the deceased; and if there be more than one surviving child of the deceased, but no widow or dependent husband, then for the support of such children, in equal parts 50 per centum of such wages increased by 16⅔ per centum of such wages for each child in excess of one: *Provided,* That the total amount payable shall in no case exceed 66⅔ per centum of such wages.

(d) If there be no surviving wife or husband or child, or if the amount payable to a surviving wife or husband and to children shall be less in the aggregate than 66⅔ per centum of the average wages of the deceased; then for the support of grandchildren or brothers and sisters, if dependent upon the deceased at the time of the injury, and any other persons who satisfy the definition of the term "dependent" in section 152 of Title 26, but are not otherwise eligible under this section, 20 per centum of such wages for the support of each such person during such dependency and for the support of each parent, or grandparent, of the deceased if dependent upon him at the time of the injury, 25 per centum of such wages during such dependency. But in no case shall the aggregate amount payable under this subdivision exceed the difference between 66⅔ per centum of such wages and the amount payable as hereinbefore provided to widow or widower and for the support of surviving child or children.

(e) In computing death benefits the average weekly wages of the deceased shall be considered to have been not less than the applicable national average weekly wage as prescribed in section 906(b) of this title but the total weekly benefits shall not exceed the average weekly wages of the deceased.

* * * * *

(As amended Oct. 27, 1972, Pub. L. 92–576, §§ 5(d), 10, 20(c)(2), 86 Stat. 1253, 1257, 1265.)

AMENDMENTS

1972—Pub. L. 92–576, § 5(d), provided that the compensation shall be known as a death benefit if the employee who sustains permanent total disability due to the injury thereafter dies from causes other than the injury.

Subd. (a). Pub. L. 92–576, § 10(a), substituted "$1,000" for "$400".

Subd. (b). Pub. L. 92–576, §§ 10(b), 20(c)(2), substituted "50" for "35" per centum in three instances and "16⅔" for "15" per centum and "widow or widower" for or widower" for "surviving wife or dependent husband" in three instances

Subd. (c). Pub. L. 92–576, §§ 10(b), 20(c)(2), substituted "50" for "35" per centum in two instances and "16⅔" for "15" per centum and "widow or widower" for "surviving wife or dependent husband".

Subd. (d). Pub. L. 92–576, §§ 10(c), 20(c)(2), in first sentence, substituted "husband or child," and "husband" for "dependent husband or child" and "dependent husband" and "20" for "15" per centum, and inserted the clause "and any other persons who satisfy the definition of the term 'dependent' in section 152 of Title 26, but are not otherwise eligible under this section" following "time of the injury," and "during such dependency" following "support of each such person", and in second sentence, substituted "widow or widower" for "surviving wife or dependent husband", respectively.

Subd. (e). Pub. L. 92–576, § 10(d), substituted "less than the applicable national average weekly wage as prescribed in section 906(b) of this title but the total weekly benefits shall not exceed the average weekly wages of the deceased" for "more than $105 nor less than $27 but the total weekly compensation shall not exceed the weekly wages of the deceased".

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 20(c)(2) of Pub. L. 92–576 substituting "widow or widower" for "surviving wife or dependent husband" wherever appearing, applicable only with respect to deaths or injuries occurring after Oct. 27, 1972, see section 20(c)(3) of Pub. L. 92–576, set out as a note under setcion 902 of this title.

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 908 of this title; title 30 section 932; title 42 sections 1652, 1701, 1702.

§ 910. Determination of pay.

Except as otherwise provided in this chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

* * * * *

(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries sustained after October 27, 1972, shall be increased by a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 906(b) of this title, exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1.

(g) The weekly compensation after adjustment under subsection (f) of this section shall be fixed at the nearest dollar. No adjustment of less than $1 shall be made, but in no event shall compensation or death benefits be reduced.

(h)(1) Not later than ninety days after October 27, 1972, the compensation to which an employee or his survivor is entitled due to total permanent disability or death which commenced or occurred prior to October 27, 1972, shall be adjusted. The amount of such adjustment shall be determined in accordance with regulations of the Secretary by designating as the employee's average weekly wage the applicable national average weekly wage determined under section 906(b) of this title and (A) computing the compensation to which such employee or survivor would be entitled if the disabling injury or death had occurred on the day following October 27, 1972, and (B) subtracting therefrom the compensation to which such employee or survivor was entitled on October 27, 1972; except that no such employee or survivor shall receive total compensation amounting to less than that to which he was entitled on October 27, 1972. Notwithstanding the foregoing sentence, where such an employee or his survivor was awarded compensation as the result of death or permanent total disability at less than the maximum rate that was provided in this chapter at the time of the injury which resulted in the death or disability, then his average weekly wage shall be determined by increasing his average weekly wage at the time of such injury by the percentage which the applicable national average weekly wage has increased between the year in which the injury occurred and the first day of the first month following October 27, 1972. Where such injury occurred prior to 1947, the Secretary shall determine, on the basis of such economic data as he deems relevant, the amount by which the employee's average weekly wage shall be increased for the pre-1947 period.

(2) Fifty per centum of any additional compensation or death benefit paid as a result of the adjustment required by paragraphs (1) and (3) of this subsection shall be paid out of the special fund established under section 944 of this title, and 50 per centum shall be paid from appropriations.

(3) For the purposes of subsections (f) and (g) of this section an injury which resulted in permanent total disability or death which occurred prior to October 27, 1972, shall be considered to have occurred on the day following such date. (As amended Oct. 27, 1972, Pub. L. 92–576, § 11, 86 Stat. 1258.)

AMENDMENTS

1972—Subds. (f)–(h). Pub. L. 92–576 added subds. (f) to (h).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTION

This section is referred to in sections 906, 944 of this title; title 30 section 932; title 42 section 1702.

§ 911. Guardian for minor or incompetent.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 944 of this title.

§ 912. Notice of injury or death.

(a) Notice of an injury or death in respect of which compensation is payable under this chapter shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment. Such notice shall be given (1) to the deputy commissioner in the compensation district in which the injury occurred, and (2) to the employer.

* * * * *

(As amended Oct. 27, 1972, Pub. L. 92–576, § 12(a), 86 Stat. 1259.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 provided for notice of an injury or death within thirty days after the employee or beneficiary is aware or in the exercise of reasonable diligence should have been aware of a relationship between the injury or death and the employment.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 936 of this title; title 30 section 932.

§ 913. Time for filing of claims.

(a) Except as otherwise provided in this section, the right to compensation for disability or death under this chapter shall be barred unless a claim therefore is filed within one year after the injury or death. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the deputy commissioner in the compensation district in which such injury or death occurred. The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

* * * * *

(As amended Oct. 27, 1972, Pub. L. 92–576, § 12(b), 86 Stat. 1259.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 added the introductory phrase "Except as otherwise provided in this section" and provided that the time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 919 of this title; title 30 section 932.

§ 914. Payment of compensation.

* * * * *

(f) If any compensation, payable under the terms of an award, is not paid within ten days after it becomes due, there shall be added to such unpaid compensation an amount equal to 20 per centum thereof, which shall be paid at the same time as, but in addition to, such compensation, unless review of the compensation order making such award is had as provided in section 921 of this title and an order staying payment has been issued by the Board or court.

* * * * *

(m) Repealed. Pub. L. 92–576, § 5(e), Oct. 27, 1972, 86 Stat. 1254.

(As amended Oct. 27, 1972, Pub. L. 92–576, §§ 5(e), 15(d), 86 Stat. 1254, 1262.)

AMENDMENTS

1972—Subd. (f). Pub. L. 92–576, § 15(d), substituted "order staying payment has been issued by the Board or court" for "interlocutory injunction staying payments is allowed by the court as provided therein".

Subd. (m). Pub. L. 92–576, § 5(e), repealed subd. (m) limiting aggregate money allowance for an injury under this chapter to $24,000, making the limitation inapplicable to cases of permanent total disability or death, and providing that in applying the limitation there shall not be taken into account any amount payable under section 908(g) of this title for maintenance during rehabilitation or any amount of additional compensation required to be paid under this section for delay or default in the payment of compensation or any amount accruing as interest upon defaulted compensation collectible under section 918 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 928 of this title; title 42 section 1702.

§ 917. Compensation a lien against assets.

(a) Any person entitled to compensation under the provisions of this chapter shall have a lien against the assets of the carrier or employer for such compensation without limit of amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

(b) Where a trust fund which complies with section 186(c) of Title 29 established pursuant to a collective-bargaining agreement in effect between an employer and an employee entitled to compensation under this chapter has paid disability benefits to an employee which the employee is legally obligated to repay by reason of his entitlement to compensation under this chapter, the Secretary may authorize a lien on such compensation in favor of the trust fund for the amount of such payments. (As amended Oct. 27, 1972, Pub. L. 92–576, § 20(b), 86 Stat. 1264.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 designated existing provisions as subd. (a).

Subd. (b). Pub. L. 92–576 added subd. (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 918 of this title.

§ 918. Collection of defaulted payments; special fund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 921 of this title.

§ 919. Procedure in respect of claims.

* * * * *

(d) Notwithstanding any other provisions of this chapter, any hearing held under this chapter shall be conducted in accordance with the provisions of section 554 of Title 5. Any such hearing shall be conducted by a hearing examiner qualified under section 3105 of that title. All powers, duties, and responsibilities vested by this chapter, on October 27, 1972, in the deputy commissioners with respect to such hearings shall be vested in such hearing examiners.

* * * * *

(As amended Oct. 27, 1972, Pub. L. 92-576, § 14, 86 Stat. 1261.)

AMENDMENTS

1972—Subd. (d). Pub. L. 92-576 substituted provisions for conduct of hearings under section 554 of Title 5 by a hearing examiner qualified under section 3105 of Title 5 and vesting in hearing examiners the powers, duties, and responsibilities vested in deputy commissioners on Oct. 27, 1972, for former provisions authorizing claimant and employer to present evidence with respect to claims and for representation of a claimant under a written authorization.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 918, 921 of this title; title 30 section 925.

§ 921. Review of compensation orders.

(a) Effectiveness and finality of orders.

A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 919 of this title, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) Benefits Review Board; establishment; members; chairman; quorum; voting; questions reviewable; record; conclusiveness of findings; stay of payments; remand.

(1) There is hereby established a Benefits Review Board which shall be composed of three members appointed by the Secretary from among individuals who are especially qualified to serve on such Board. The Secretary shall designate one of the members of the Board to serve as chairman.

(2) For the purpose of carrying out its functions under this chapter, two members of the Board shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(3) The Board shall be authorized to hear and determine appeals raising a substantial question of law or fact taken by any party in interest from decisions with respect to claims of employees under this chapter and the extensions thereof. The Board's orders shall be based upon the hearing record. The findings of fact in the decision under review by the Board shall be conclusive if supported by substantial evidence in the record considered as a whole. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the Board. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier.

(4) The Board may, on its own motion or at the request of the Secretary, remand a case to the hearing examiner for further appropriate action. The consent of the parties in interest shall not be a prerequisite to a remand by the Board.

(c) Court of appeals; jurisdiction; persons entitled to review; petition; record; determination and enforcement; service of process; stay of payments.

Any person adversely affected or aggrieved by a final order of the Board may obtain a review of that order in the United States court of appeals for the circuit in which the injury occurred, by filing in such court within sixty days following the issuance of such Board order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court, to the Board, and to the other parties, and thereupon the Board shall file in the court the record in the proceedings as provided in section 2112 of Title 28. Upon such filing, the court shall have jurisdiction of the proceeding and shall have the power to give a decree affirming, modifying, or setting aside, in whole or in part, the order of the Board and enforcing same to the extent that such order is affirmed or modified. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless irreparable injury would otherwise ensue to the employer or carrier. The order of the court allowing any stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that irreparable damage would result to the employer, and specifying the nature of the damage.

(d) District court; jurisdiction; enforcement of orders; application of beneficiaries of awards or deputy commissioner; process for compliance with orders.

If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the United States District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with

law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(e) Institution of proceedings for suspension, setting aside, or enforcement of compensation orders.

Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 918 of this title. (As amended Oct. 27, 1972, Pub. L. 92–576, § 15(a), (b), 86 Stat. 1261, 1262.)

AMENDMENTS

1972—Subd. (b). Pub. L. 92–576, § 15(a), added subd. (b). Former provisions of subd. (b) for injunction proceedings to suspend or set aside a compensation order by a party in interest against a deputy commissioner in Federal district court for judicial district where injury occurred superseded by subd. (c) of this section and former provisions of such subd. (b) respecting service of process and stay of payments, except for the procedural requirement of an interlocutory injunction to the court and hearing on at least three days' notice to the parties in interest and the deputy commissioner, incorporated in subd. (c) of this section.

Subd. (c). Pub. L. 92–576, § 15(a), added subd. (c). Former subd. (c) redesignated (d).

Subds. (d), (e), Pub. L. 92–576, § 15(b), redesignated former subds. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 914, 919, 921a, 939 of this title; title 5 section 8171; title 42 section 1653.

§ 921a. Appearance of attorneys for Secretary, deputy commissioner, or Board.

Attorneys appointed by the Secretary shall represent the Secretary, the deputy commissioner, or the Board in any court proceedings under section 921 of this title or other provisions of this chapter except for proceedings in the Supreme Court of the United States. (As amended Oct. 27, 1972, Pub. L. 92–576, § 16, 86 Stat. 1262.)

AMENDMENTS

1972—Pub. L. 92–576 substituted provisions for representation of the Secretary, the deputy commissioner, or the Board by attorneys appointed by the Secretary except for proceedings in the Supreme Court, for former provisions requiring the United States attorney in the judicial district in which the case is pending to appear as attorney or counsel on behalf of the Secretary of Labor or his deputy commissioner when either is a party to the case or interested, and to represent such Secretary or deputy in any court in which such case may be carried on appeal.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 941 of this title.

§ 923. Procedure before deputy commissioner or Board.

(a) In making an investigation or inquiry or conducting a hearing the deputy commissioner or Board shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before a deputy commissioner or Board shall be open to the public and shall be stenographically reported, and the deputy commissioners or Board, subject to the approval of the Secretary, are authorized to contract for the reporting of such hearings. The Secretary shall by regulation provide for the preparation of a record of the hearings and other proceedings before the deputy commissioners or Board. (As amended Oct. 27, 1972, Pub. L. 92–576, § 15(e), 86 Stat. 1262.)

AMENDMENTS

1972—Pub. L. 92–576 inserted references to the Board in subds. (a) and (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

§ 927. Powers of deputy commissioners or Board.

(a) The deputy commissioner or Board shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) If any person in proceedings before a deputy commissioner or Board disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the deputy commissioner or Board shall certify the facts to the district court having jurisdiction in the place in which he is sitting (or to the United States District Court for the District of Columbia if he is sitting in such District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and if the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court. (As amended Oct. 27, 1972, Pub. L. 92–576, § 15(e), 86 Stat. 1262.)

AMENDMENTS

1972—Pub. L. 92–576 inserted references to the Board in subds. (a) and (b).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

§ 928. Fees for services.

(a) Attorney's fee; successful prosecution of claim.

If the employer or carrier declines to pay any compensation on or before the thirtieth day after receiving written notice of a claim for compensation having been filed from the deputy commissioner, on the ground that there is no liability for compensation within the provisions of this chapter and the person seeking benefits shall thereafter have utilized the services of an attorney at law in the successful prosecution of his claim, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee against the employee or carrier in an amount approved by the deputy commissioner, Board, or court, as the case may be, which shall be paid directly by the employer or carrier to the attorney for the claimant in a lump sum after the compensation order becomes final.

(b) Attorney's fee; successful prosecution for additional compensation; independent medical evaluation of disability controversy; restriction of other assessments.

If the employer or carrier pays or tenders payment of compensation without an award pursuant to section 914 (a) and (b) of this title, and thereafter a controversy develops over the amount of additional compensation, if any, to which the employee may be entitled, the deputy commissioner or Board shall set the matter for an informal conference and following such conference the deputy commissioner or Board shall recommend in writing a disposition of the controversy. If the employer or carrier refuse to accept such written recommendation, within fourteen days after its receipt by them, they shall pay or tender to the employee in writing the aditional compensation, if any, to which they believe the employee is entitled. If the employee refuses to accept such payment or tender of compensation, and thereafter utilizes the services of an attorney at law, and if the compensation thereafter awarded is greater than the amount paid or tendered by the employer or carrier, a reasonable attorney's fee based solely upon the difference between the amount awarded and the amount tendered or paid shall be awarded in addition to the amount of compensation. The foregoing sentence shall not apply if the controversy relates to degree or length of disability, and if the employer or carrier offers to submit the case for evaluation by physicians employed or selected by the Secretary, as authorized in section 907(e) of this title and offers to tender an amount of compensation based upon the degree or length of disability found by the independent medical report at such time as an evaluation of disability can be made. If the claimant is successful in review proceedings before the Board or court in any such case an award may be made in favor of the claimant and against the employer or carrier for a reasonable attorney's fee for claimant's counsel in accord with the above provisions. In all other cases any claim for legal services shall not be assessed against the employer or carrier.

(c) Approval; payment; lien.

In all cases fees for attorneys representing the claimant shall be approved in the manner herein provided. If any proceedings are had before the Board or any court for review of any action, award, order, or decision, the Board or court may approve an attorney's fee for the work done before it by the attorney for the claimant. An approved attorney's fee, in cases in which the obligation to pay the fee is upon the claimant, may be made a lien upon the compensation due under an award; and the deputy commissioner, Board, or court shall fix in the award approving the fee, such lien and manner of payment.

(d) Costs; witnesses' fees and mileage; prohibition against diminution of compensation to claimant.

In cases where an attorney's fee is awarded against an employer or carrier there may be further assessed against such employer or carrier as costs, fees and mileage for necessary witnesses attending the hearing at the instance of claimant. Both the necessity for the witness and the reasonableness of the fees of expert witnesses must be approved by the hearing officer, the Board, or the court, as the case may be. The amounts awarded against an employer or carrier as attorney's fees, costs, fees and mileage for witnesses shall not in any respect affect or diminish the compensation payable under this chapter.

(e) Unapproved fees; solicitation; penalty.

Any person who receives any fees, other consideration, or any gratuity on account of services rendered as a representative of a claimant, unless such consideration or gratuity is approved by the deputy commissioner, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself in respect of any claim or award for compensation, shall upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment. (As amended Oct. 27, 1972, Pub. L. 92–576, § 13, 86 Stat. 1259.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576 substituted provisions respecting payment of attorney's fee for successful prosecution of claim for former provisions respecting approval by deputy commissioner or court of claims for legal services or for any other services rendered in respect of a claim or award for compensation and for lien upon the compensation in the manner and to the extent fixed by the deputy commissioner or the court, now covered in subd. (c) of this section.

Subd. (b). Pub. L. 92–576 added subd. (b). Former subd. (b) redesignated (e).

Subd. (c). Pub. L. 92–576 added subd. (c).

Subd. (d). Pub. L. 92–576 added subd. (d).

Subd. (e). Pub. L. 92–576 redesignated former subd. (b) as (e), deleted item (1) and (2) designations preceding "who", substituted "services rendered as a representative of a claimant" for "services so rendered", and included approval by the Board.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

§§ 929 to 932.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 30 section 932.

§ 933. Compensation for injuries where third persons are liable.

* * * * *

(b) Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner or Board shall operate as an assignment to the employer of all right of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such award.

* * * * *

(e) Any amount recovered by such employer on account of such assignment, whether or not as the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney's fee as determined by the deputy commissioner or Board);

* * * * *

(g) If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this chapter the employer shall be liable for compensation as determined in subdivision (f) of this section only if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made.

* * * * *

(As amended Oct. 27, 1972, Pub. L. 92–576, § 15(f)—(h), 86 Stat. 1262.)

AMENDMENTS

1972—Subd. (b). Pub. L. 92–576, § 15(f), inserted "or Board" after "deputy commissioner".

Subd. (e)(1)(A). Pub. L. 92–576, § 15(g), inserted "or Board" after "deputy commissioner".

Subd. (g). Pub. L. 92–576, § 15(h), substituted "if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made" for "if such compromise is made with his written approval".

EFFECTIVE DATE OF 1972 AMENDMENT.

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 905, 907 of this title; title 30 section 932.

§ 935. Substitution of carrier for employer.

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the Secretary shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect to such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes (1) notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by a deputy commissioner, the Board, or the Secretary, or any court under this chapter shall be jurisdiction of the carrier, and (3) any requirement by a deputy commissioner, the Board, or the Secretary, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer. (As amended Oct. 27, 1972, Pub. L. 92–576, § 15(i), 86 Stat. 1262.)

AMENDMENTS

1972—Pub. L. 92–576 inserted reference to the Board in items (2) and (3).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 936 of this title.

§ 938. Penalty for failure to secure payment of compensation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 939. Administration.

* * * * *

(c)(1) The Secretary shall, upon request, provide persons covered by this chapter with information and assistance relating to the chapter's coverage and compensation and the procedures for obtaining such compensation and including assistance in processing a claim. The Secretary may, upon request, provide persons covered by this chapter with legal assistance in processing a claim. The Secretary shall also provide employees receiving compensation information on medical, manpower, and vocational rehabilitation services and assist such employees in obtaining the best such services available.

(2) The Secretary shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies in States or Territories, possessions, or the District of Columbia for such rehabilitation. The Secretary may in his discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this chapter to render a disabled employee fit to engage in a remunerative occupation. Where necessary rehabilitation servics are not available otherwise, the Secretary of Labor may, in his discretion, use the fund provided for in section 944 of his title in such amounts as may be necessary to procure such services, including necessary prosthetic appliance or other apparatus. This fund shall also be available in such amounts as may be authorized in annual appropriations for the Department

of Labor for the costs of administering this subsection. (As amended Oct. 27, 1972, Pub. L. 92–576, § 17, 86 Stat. 1262.)

REFERENCES IN TEXT

The civil service laws, referred to in subd. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

AMENDMENTS

1972—Subd. (c). Pub. L. 92–576 added par. (1) and redesignated former subd. (c) as par. (2).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 944 of this title; title 5 sections 7151, 8171.

§ 940. Deputy commissioners; Board members.

* * * * *

(f) Neither a deputy commissioner or Board member nor any business associate of a deputy commissioner or Board member shall appear as attorney in any proceeding under this chapter, and no deputy commissioner or Board member shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree, as determined by the common law. (As amended Oct. 27, 1972, Pub. L. 92–576, § 15(j), 86 Stat. 1262.)

AMENDMENTS

1972—Subd. (f). Pub. L. 92–576 inserted references to Board member in three instances.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 939 of this title.

§ 941. Safety rules and regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 944. Special fund.

(a) Establishment; administration; custody, trust.

There is established in the Treasury of the United States a special fund. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) Disbursements; bond of custodian.

The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into fund.

Payments into such fund shall be made as follows:

(1) Whenever the Secretary determines that there is no person entitled under this chapter to compensation for the death of an employee which would otherwise be compensable under this chapter, the appropriate employer shall pay $5,000 as compensation for the death of such an employee.

(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer shall make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this chapter by each carrier and self-insurer bears to the total of such payments made by all carriers and self-insurers under the chapter in the prior calendar year in accordance with a formula and schedule to be determined from time to time by the Secretary to maintain adequate reserves in the fund.

(3) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund.

(d) Investigations; records, availability; recordkeeping; provisions of sections 49 and 50 of Title 15 applicable to Secretary.

(1) For the purpose of making rules, regulations, and determinations under this section under and for providing enforcement thereof, the Secretary may investigate and gather appropriate data from each carrier and self-insurer. For that purpose, the Secretary may enter and inspect such places and records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate.

(2) Each carrier and self-insurer shall make, keep, and preserve such records, and make such reports and provide such additional information, as prescribed by regulation or order of the Secretary, as the Secretary deems necessary or appropriate to carry out his responsibilities under this section.

(3) For the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of this section, the provisions of sections 49 and 50 of Title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.

(e) Authorization of appropriations; property of fund; repayment.

There is hereby authorized to be appropriated to the Secretary the sum of $2,000,000 which the Secretary shall immediately deposit into the fund. Upon deposit in the fund such moneys shall be treated as the property of such fund. This sum, without additional payments for interest, shall be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary: *Provided*, That full repayment must be made no later than five years from the date of deposit into the fund. Each such repayment, as made, shall be covered into the Treasury of the United States as miscellaneous receipts.

(f) Depositories; investments.

The Treasurer of the United States shall deposit any moneys paid into such fund into such depository

banks as the Secretary may designate and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(g) Limitation of liability.

Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 908 of this title in an amount greater than the money or property deposited in or belonging to such fund.

(h) Audit by Comptroller General; finality of payment determinations; credits of disbursing officers.

The Comptroller General of the United States shall audit the account for such fund, but the action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such fund authorized by the Secretary.

(i) Civil actions for civil penalties.

All civil penalties provided for in this chapter shall be collected by civil suit brought by the Secretary.

(j) Proceeds available for certain payments.

The proceeds of this fund shall be available for payments:

(1) Pursuant to sections 910 and 911 of this title with respect to initial and subsequent annual adjustments in compensation for total permanent disability or death which occurred prior to the effective date of this subsection.

(2) Under section 908 (f) and (g), under section 918(b), and under section 939(c) of this title.

(3) To repay the sums deposited in the fund pursuant to subsection (d) of this section.

(4) To defray the expense of making examinations as provided in section 907 of this title.

(k) Audit to Congress.

At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund. (As amended Oct. 27, 1972, Pub. L. 92–576, § 8, 86 Stat. 1256.)

AMENDMENTS

1972—Subd. (a). Pub. L. 92–576, § 8(a), substituted "special fund" for "special fund for the purpose of making payments in accordance with the provisions of subsections (f) and (g) of section 908, of subsection (b) of section 918, and of subsection (c) of section 939 of this title".

Subd. (c)(1). Pub. L. 92–576, § 8(b), increased compensation payment for death to $5,000 from $1,000; inserted provision for compensation which would otherwise be compensable under this chapter; deleted second sentence, less two provisos, now incorporated in subsec. (j)(2) of this section; deleted first such proviso for priority of payments authorized by subsec. (f) over other payments authorized from the fund; and deleted second such proviso, now incorporated in subsec. (k) of this section.

Subd. (c)(2). Pub. L. 92–576, § 8(b), added subd. (c)(2). Former subd. (c)(2) redesignated (c)(3).

Subd. (c)(3). Pub. L. 92–576, § 8(b), redesignated former subd. (c)(2) as (c)(3).

Subd. (d). Pub. L. 92–576, § 8(b), added subd. (d). Former subd. (d) redesignated (f).

Subd. (e). Pub. L. 92–576, § 8(b), added subd. (e). Former subd. (e) redesignated (g).

Subds. (f)–(i). Pub. L. 92–576, § 8(b), redesignated former subds. (d) to (g) as (f) to (i).

Subd. (j). Pub. L. 92–576, § 8(d), added cls. (1), (3), and (4), and incorporated former part of first sentence of subsec. (a) and former second sentence, less provisos, of subd. (c)(1), in provisions designated as cl. (2).

Subd. (k). Pub. L. 92–576, § 8(d), incorporated former provisions of subd. (c)(1), last proviso, in provisions designated as subd. (k).

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 907, 908, 910, 918, 933, 939, 945, 948a of this title; title 30 section 932.

§ 945. Administration fund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 947. Availability of appropriations.

The expenses incurred for salaries and contingent expenses by the Secretary in the administration (1) of subchapter I of chapter 81 of Title 5, and (2) of this chapter, may be paid from the appropriations for salaries and contingent expenses for the administration of said subchapter I of chapter 81 of Title 5, and from the fund established in section 945 of this title, in such proportion as the Secretary, with the approval of the Director of the Office of Management and Budget, determines to be fairly attributable to the cost of administration of the respective chapters, but the total amount paid from such appropriation and such fund in any fiscal year on account of the administration of said subchapter I of chapter 81 of Title 5, shall not exceed the amounts appropriated for salaries and contingent expenses for the administration of said subchapter I of chapter 81 for such year. (Mar. 4, 1927, ch. 509, § 47, 44 Stat. 1445; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

REFERENCES IN TEXT

Subchapter I of chapter 81 of Title 5, referred to in text, was substituted for original references to act Sept. 7, 1916, which, prior to its incorporation into Title 5, Government Organization and Employees, as such subchapter I of chapter 81 thereof, was popularly known as the "Federal Employees Compensation Act".

CODIFICATION

This section is set out in this supplement to correct translations therein.

TRANSFER OF FUNCTIONS

All functions vested by law (including reorganization plan) in the Bureau of the Budget or the Director of the Bureau of the Budget were transferred to the President of the United States by section 101 of 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085. Section 102 of 1970 Reorg. Plan No. 2, redesignated the Bureau of the Budget as the Office of Management and Budget. See Transfer of Functions note set out under this section in the main volume.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 948. Laws inapplicable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability.

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. Any employer who violates this section shall be liable to a penalty of not less than $100 or more than $1,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 944 of this title, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided,* That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void. (Mar. 4, 1927, ch. 509, § 49, as added Oct. 27, 1972, Pub. L. 92–576, § 19, 86 Stat. 1263.)

EFFECTIVE DATE

Section effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92–576, set out as a note under section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§§ 949, 950.

Sections 49 and 50 of act Mar. 4, 1927, redesignated sections 50 and 51, respectively, by Pub. L. 92–576, § 19, Oct. 27, 1972, 86 Stat. 1263.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in title 30 section 932.

Chapter 19.—SAINT LAWRENCE SEAWAY

§ 982. Management of Corporation; appointment of Administrator; terms; vacancy; Advisory Board; establishment; membership; meetings; duties; compensation and expenses.

(a) The management of the corporation shall be vested in an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of seven years. Any Administrator appointed to fill a vacancy in that position prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(b) There is established the Advisory Board of the Saint Lawrence Seaway Development Corporation which shall be composed of five members appointed by the President, by and with the advice and consent of the Senate, not more than three of whom shall belong to the same political party. The Advisory Board shall meet at the call of the Administrator, who shall require it to meet not less often than once each ninety days; shall review the general policies of the Corporation, including its policies in connection with design and construction of facilities and the establishment of rules of measurement for vessels and cargo and rates of charges or tolls; and shall advise the Administrator with respect thereto. Members of the Advisory Board shall receive for their services as members compensation of not to exceed $50 per diem when actually engaged in the performance of their duties, together with their necessary traveling expenses while going to and coming from meetings. (As amended Jan. 2, 1975, Pub. L. 93–615, § 1, 88 Stat. 1977.)

AMENDMENTS

1975—Subsec. (a). Pub. L. 93–615, § 1(a), added the provisions relating to a term of seven years and the length of the term of any Administrator appointed to fill a vacancy in the position of the Administrator prior to the expiration of the term for which his predecessor was appointed.

Subsec. (b). Pub. L. 93–615, § 1(b), redesignated subsec. (c) as (b). Former subsec. (b), relating to the appointment and duties of a Deputy Administrator, was repealed.

Subsec. (c). Pub. L. 93–615, § 1(b), redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 1975 AMENDMENT

Section 2 of Pub. L. 93–615 provided that: "The amendments made to section 2 of the Act of May 13, 1954, by the first section of this Act [amending the section] shall (1) take effect upon the first appointment of an Administrator of the Saint Lawrence Seaway Development Corporation which is made after the date of enactment of this Act [Jan. 2, 1975], and (2) be applicable to such first appointment and to each subsequent appointment to such position."

TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Board established by the President or an officer of the Federal Government, such Board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 984. General powers of Corporation.

(a) For the purpose of carrying out its functions under this chapter the Corporation—

* * * * *

(7) may appoint and fix the compensation, in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5, of such officers, attorneys, and employees as may be necessary for the conduct of its business, define their authority and duties, and delegate to them such of the powers vested in the Corporation as the Administrator may determine;

* * * * *

(As amended June 6, 1972, Pub. L. 92–310, title II, § 232, 86 Stat. 214.)

AMENDMENTS

1972—Subsec. (a)(7). Pub. L. 92–310 eliminated provisions which empowered the Corporation to require bonds from such officers, attorneys, and employees as the Administrator might designate.

Chapter 20.—POLLUTION OF THE SEA BY OIL

Sec.
1004a. United States tankers; construction standards [New].
(a) Tank arrangement and tank size limitation pursuant to provisions of annex C to the convention; building contracts placed on or after effective date.
(b) Same; building contracts place or keel laid before effective date.
(c) Domestic tankers without certificate of compliance or exemption prohibited from engaging in domestic or foreign trade.
(d) Foreign tankers with foreign registry but without certificate of compliance; consultation with foreign government; denial of access.
(e) Foreign tankers without foreign registry; denial of access.
1016. Effective date of 1973 Amendments [New].
(a) General provision.
(b) Savings provision.
(c) Special provision.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 section 1655.

§ 1001. Definitions.

As used in this chapter, unless the context otherwise requires—

* * * * *

(c) The term "instantaneous rate of discharge of oil content" means the rate of discharge of oil in liters per hour at any instant divided by the speed of the ship in knots at the same instant;

(d) The term "heavy diesel oil" means diesel oil, other than those distillates of which more than 50 per centum, by volume distills at a temperature not exceeding three hundred and forty degrees centigrade when tested by American Society for Testing and Materials standard method D. 86/59;

(e) The term "mile" means a nautical mile of six thousand and eighty feet or one thousand eight hundred and fifty-two meters;

(f) The term "oil" means crude oil, fuel oil, heavy diesel oil, and lubricating oil, and "oily" shall be construed accordingly; an "oily mixture" means a mixture with any oil content;

(g) The term "person" means an individual, partnership, corporation, or association; and any owner, operator, agent, master, officer or employee of a ship;

(h) The term "Secretary" means the Secretary of the department in which the Coast Guard is operating;

* * * * *

(j) The term "from the nearest land" means from the baseline from which the territorial sea of the territory in question is established in accordance with the Geneva Convention on the Territorial Sea and the Contiguous Zone, 1958; except that, for the purpose of this chapter "from the nearest land" off the northeastern coast of Australia means a line drawn from a point on the coast of Australia in latitude 11 degrees south, longitude 142 degrees 08 minutes east to a point in latitude 10 degrees 35 minutes south, longitude 141 degrees 55 minutes east—

thence to a point latitude 10 degrees 00 minutes south, longitude 142 degrees 00 minutes east;

thence to a point latitude 9 degrees 10 minutes south, longitude 143 degrees 52 minutes east;

thence to a point latitude 9 degrees 00 minutes south, longitude 144 degrees 30 minutes east;

thence to a point latitude 13 degrees 00 minutes south, longitude 144 degrees 00 minutes east;

thence to a point latitude 15 degrees 00 minutes south, longitude 146 degrees 00 minutes east;

thence to a point latitude 18 degrees 00 minutes south, longitude 147 degrees 00 minutes east;

thence to a point latitude 21 degrees 00 minutes south, longitude 153 degrees 00 minutes east;

thence to a point on the coast of Australia in latitude 24 degrees 42 minutes south, longitude 153 degrees 15 minutes east. (As amended Pub. L. 93–119, § 2(1), Oct. 4, 1973, 87 Stat. 424.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–119, § 2(1)(C), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 93–119, § 2(1)(B), (D), redesignated former subsec. (c) as (d), and deleted the word "marine" preceding "diesel oil" and substituted "American Society for Testing and Materials" for "American Society for the Testing of Materials", respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 93–119, § 2(1)(B), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 93–119, § 2(1)(B),(E), redesignated former subsec. (e) as (f) and substituted "; an 'oily mixture' means a mixture with any oil content;" for ". An 'oily mixture' means a mixture with an oil content of one hundred parts or more in one million parts of mixture." Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 93–119, § 2(1)(A), (B), repealed former subsec. (g) which defined "prohibited zones" and redesignated former subsec. (f) as (g), respectively.

Subsec. (h). Pub. L. 93–119, § 2(1)(F), substituted as the definition for "Secretary" the "Secretary of the department in which the Coast Guard is operating" for "Secretary of Transportation".

Subsec. (j). Pub. L. 93–119, § 2(1)(G), inserted definition of "from the nearest land" off the northeastern coast of Australia.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93–119 provided: "That this Act [which enacted sections 1004a and 1016, amended sections 1001 to 1004, 1005, 1007 to 1010, and 1014, and repealed sections 1011 and 1015 of this title] may be cited as the 'Oil Pollution Act Amendments of 1973'."

SEPARABILITY OF PROVISIONS

Section 14, formerly 15 of Pub. L. 87–167, renumbered by section 2(13) of Pub. L. 93–119 provided that: "If a provision of this Act [this chapter] or the application of such provision to any person or circumstances shall be held invalid, the remainder of the Act [this chapter] and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1007 of this title.

§ 1002. Prohibition against discharge of oil or oily mixtures; permissible discharges.

Subject to the provisions of sections 1003 and 1004 of this title, the discharge of oil or oily mixture from a ship is prohibited unless—

(a) the ship is proceeding en route; and

(b) the instantaneous rate of discharge of oil content does not exceed sixty liters per mile, and

(c)(1) for a ship, other than a tanker—

(i) the oil content of the discharge is less than one hundred parts per one million parts of the mixture, and

(ii) the discharge is made as far as practicable from the nearest land;

(2) for a tanker, except discharges from machinery space bilges which shall be governed by the above provisions for ships other than tankers—

(i) the total quantity of oil discharged on a ballast voyage does not exceed the fifteen thousandths of the total cargo-carrying capacity, and

(ii) the tanker is more than fifty miles from the nearest land.

(As amended Pub. L. 93–119, § 2(2), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119 substituted in introductory text "the discharge of oil or oily mixture from a ship is prohibited unless—" for "it shall be unlawful for any person to discharge oil or oily mixture from:".

Subsecs. (a)–(c). Pub. L. 93–119, in revising the text, substituted provisions of subsecs. (a) to (c) for former provisions which made unlawful the discharge of oil or oily mixture from: "(a) a tanker within any of the prohibited zones."; "(b) a ship other than a tanker, within any of the prohibited zones, except when the ship is proceeding to a port not provided with facilities adequate for the reception, without causing undue delay, it may discharge such residue and oily mixture as would remain for disposal if the bulk of the water had been separated from the mixture: Provided, such discharge is made as far as praticable from land." and "(c) a ship of twenty thousand tons gross tonnage or more, including a tanker, for which the building contract is placed on or after the effective date of this chapter."

Pub. L. 93–119 deleted second and third sentences which authorized discharge of oil or oily mixture outside the prohibited zones if in the opinion of the master special circumstances made it neither reasonable nor practicable to retain the oil or oily mixture and which required the reasons for the discharge to be reported in accordance with regulations prescribed by the Secretary.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1003, 1004, 1007, 1009 of this title.

§ 1003. Excepted discharges; securing safety of ship; prevention of damage to ship or cargo; saving life; damaged ship or unavoidable leakage.

Section 1002 of this title does not apply to—

* * * * *

(b) the escape of oil, or of oily mixture, resulting from damage to a ship or unavoidable leakage, if all reasonable precautions have been taken after the occurrence of the damage or discovery of the leakage for the purpose of preventing or minimizing the escape;

(c) Repealed. Pub. L. 93–119, § 2(3)(C), Oct. 4, 1973, 87 Stat. 425.

(As amended Pub. L. 93–119, § 2(3), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119, § 2(3)(A), substituted in the introductory clause "does" for "shall".

Subsec. (b). Pub. L. 93–119, § 2(3)(B), substituted a period for the semicolon.

Subsec. (c) Pub. L. 93–119, § 2(3)(C), repealed subsec. (c) which had made provisions of section 1002 of this title inapplicable to the discharge of residue arising from the purification or clarification of fuel oil or lubricating oil, provided the discharge was made as far from land as practicable. See section 1002(c)(1)(ii), (2)(ii) of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1007, 1008, 1009 of this title.

§ 1004. Excepted discharges; tanker ballast from cargo tank.

Section 1002 of this title does not apply to the discharge of tanker ballast from a cargo tank which since the cargo was last carried therein, has been so cleaned that any effluent therefrom, if it were discharged from a stationary tanker into clean calm water on a clear day, would produce no visible traces of oil on the surface of the water. (As amended Pub. L. 93–119, § 2(4), Oct. 4, 1973, 87 Stat. 425.)

AMENDMENTS

1973—Pub. L. 93–119 substituted "does not" for "shall not" and provisions which permitted discharge of tanker ballast from cargo tanker for former authorization of discharge from the bilges of a ship of an oily mixture containing no oil other than lubricating oil which had drained or leaked from machinery spaces.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1002, 1007, 1009 of this title.

§ 1004a. United States tankers; construction standards.

(a) Tank arrangement and tank size limitation pursuant to provisions of annex C to the convention; building contracts placed on or after effective date.

Every tanker to which this chapter applies and built in the United States and for which the building contract is placed on or after the effective date of this section shall be constructed in accordance with the provisions of annex C to the convention, relating to tank arrangement and limitation of tank size.

(b) Same; building contracts placed or keel laid before effective date.

Every tanker to which this chapter applies and built in the United States and for which the building contract the keel of which is laid or which is at a similar state of construction, before the effective date of this section, shall, within two years after that date, comply with the provisions of annex C of the convention if—

(1) the delivery of the tanker is after January 1, 1977; or

(2) the delivery of the tanker is not later than January 1, 1977, and the building contract is placed after January 1, 1972, or in cases where no building contract has previously been placed, the keel is laid or the tanker is at a similar stage of construction, after June 30, 1972.

(c) Domestic tankers without certificate of compliance or exemption prohibited from engaging in domestic or foreign trade.

A tanker required under this section to be constructed in accordance with annex C to the convention and so constructed shall carry on board

a certificate issued by the Secretary attesting to that compliance. A tanker which is not required to be constructed in accordance with annex C to the convention shall carry on board a certificate to that effect issued by the Secretary, or if a tanker does comply with annex C though not required to do so, she may carry on board a certificate issued by the Secretary attesting to that compliance. Tankers under the flag of the United States are prohibited from engaging in domestic or foreign trade without an appropriate certificate issued under this section.

(d) Foreign tankers with foreign registry but without certificate of compliance; consultation with foreign government; denial of access.

Certificates issued to foreign tankers pursuant to the convention by other nations party thereto shall be accepted by the Secretary as of the same force as certificates issued by him. If the Secretary has clear grounds for believing that a foreign tanker required under the convention to be constructed in accordance with annex C entering ports of the United States or using offshore terminals under United States control does not in fact comply with annex C, he may request the Secretary of State to seek consultation with the government with which the tanker is registered. If after consultation or otherwise, the Secretary is satisfied that such tanker does not comply with annex C, he may for this reason deny such tanker access to ports of the United States or to offshore terminals under United States control until such time as he is satisfied that the tanker has been brought into compliance.

(e) Foreign tankers without foreign registry; denial of access.

If the Secretary is satisfied that any other foreign tanker which, if registered in a country party to the convention, would be required to be constructed in accordance with annex C, does not in fact comply with the standards relating to tank arrangement and limitation of tank size of annex C, then he may deny such tanker access to ports of the United States or to offshore terminals under United States control. (Pub. L. 87–167, § 6, as added Pub. L. 93–119, § 2(5), Oct. 4, 1973, 87 Stat. 425.)

EFFECTIVE DATE

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1007, 1009, 1016 of this title.

§ 1005. Penalties for violations.

(a) Criminal penalties for willful violations; separate violations.

Any person who willfully discharges oil or oily mixture from a ship in violation of this chapter or the regulations thereunder shall be fined not more than $10,000 for each violation or imprisoned not more than one year, or both.

(b) Civil penalties for willful or negligent and other violations; separate violations.

In addition to any other penalty prescribed by law any person who willfully or negligently discharges oil or oily mixture from a ship in violation of this chapter or any regulation thereunder shall be liable to a civil penalty of not more than $10,000 for each violation, and any person who otherwise violates this chapter or any regulation thereunder shall be liable to a civil penalty of not more than $5,000 for each violation.

(c) Liability of vessel; venue.

A ship from which oil or oily mixture is discharged in violation of this chapter or any regulation thereunder is liable for any pecuniary penalty under this section and may be proceeded against in the district court of any district in which the vessel may be found.

(d) Administrative proceedings: assessment of civil penalties; remission, mitigation, or compromise of any penalty; notice and hearing; judicial proceedings: civil actions by Attorney General for collection of penalties; trial de novo.

The Secretary may asses any civil penalty incurred under this chapter or any regulation thereunder and, in his discretion, remit, mitigate, or compromise any penalty. No penalty may be assessed unless the alleged violator shall have been given notice and the opportunity to be heard on the alleged violation. Upon any failure to pay a civil penalty assessed under this chapter, the Secretary may request the Attorney General to institute a civil action to collect the penalty. In hearing such action, the district court shall have authority to review the violation and the assessment of the civil penalty de novo. (Pub. L. 87–167, § 7, formerly § 6, Aug. 30, 1971, 75 Stat. 403, renumbered and amended Pub. L. 93–119, § 2(6), Oct. 4, 1973, 87 Stat. 426.)

AMENDMENTS

1973—Pub. L. 93–119, in revising the text, substituted provisions of subsecs. (a) to (d) for former provisions which made violations of this chapter misdemeanors punishable by a fine within the limits of $500 to $2,500 or imprisonment not exceeding one year, or both fine or imprisonment, for each offense, provided same monetary penalty for violations of a vessel, authorized the withholding of a vessel's clearance from a domestic port until payment of the penalty, and made the penalty a lien on the vessel recoverable by libel in rem in the federal district court wherein the ship may be.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1007, 1009 of this title.

§ 1006. Suspension or revocation of license of officers of offending vessels.

Pub. L. 93–119, § 2(7), Oct. 4, 1973, 87 Stat. 427, renumbered section 7 of Pub. L. 87–167 as section 8.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1007 of this title.

§ 1007. Personnel for enforcement of provisions; arrest of offenders and procedure; ship fittings and equipment.

(a) In the administration of sections 1001 to 1010 of this title, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities, or equipment of other Federal agencies or the States. For the better enforcement of the provisions of said sections, officers of the Coast Guard and other persons employed by or acting under the authority of

the Secretary shall have power and authority and it shall be their duty to swear out process and to arrest and take into custody, with or without process, any person who may violate any of said provisions: *Provided,* That no person shall be arrested without process for a violation not committed in the presence of some one of the aforesaid officials: *And provided further,* That whenever any arrest is made under the provisions of said sections the person so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in cases of crimes against the United States. Representatives of the Secretary and of the Coast Guard of the United States may go on aboard and inspect any ship as may be necessary for enforcement of this chapter.

(b) To implement article VII of the convention, ship fittings and equipment, and operating requirements thereof, shall be in accordance with regulations prescribed by the Secretary. (Pub. L. 87–167, § 9, formerly § 8, Aug. 30, 1961, 75 Stat. 403, renumbered and amended Pub. L. 93–119, § 2 (8), Oct. 4, 1973, 87 Stat. 427.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–119, § 2(8)(A)–(C), substituted first sentence reading "In the administration of sections 1001 to 1010 of this title, the Secretary may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel, facilities, or equipment of other Federal agencies or the States." for "In the administration of sections 1001 to 1011 of this title, the Secretary may make use of the organization, equipment, and agencies, including engineering, clerical, and other personnel, employed under his direction in the improvement of rivers and harbors and in the enforcement of laws for the preservation and protection of navigable waters."; substituted in second sentence following "For the better enforcement of the provisions of said sections," text reading "officers of the Coast Guard and other persons employed by or acting under the authority of the Secretary" for "the officers and agents of the United States in charge of river and harbor improvements and persons employed under them by authority of the Secretary, and officers and employees of the Bureau of Customs and the Coast Guard"; and substituted in last sentence "Representatives of the Secretary and of the Coast Guard of the United States may go on board and inspect any ship as may be necessary" for "Representatives of the Secretary and of the Bureau of Customs and Coast Guard of the United States may go on board and inspect any ship in a prohibited zone or in a port of the United States as may be necessary".

Subsec. (b). Pub. L. 93–119, § 2(8)(D), deleted after "Secretary" the words "of the Department in which the Coast Guard is operating" and provision for a civil penalty not in excess of $100, in addition to any other penalty prescribed by law, for violation of regulations. See section 1005 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1009 of this title.

§ 1008. Oil record book.

* * * * *

(c) Operations requiring recordation.

The oil record book shall be completed on each occasion, on a tank-to-tank basis, whenever any of the following operations take place in the ship:

(1) for tankers—

(i) loading of oil cargo;

(ii) transfer of oil cargo during voyage;

(iii) discharge of oil cargo;

(iv) ballasting of cargo tanks;

(v) cleaning of cargo tanks;

(vi) discharge of dirty ballast;

(vii) discharge of water from slop tanks;

(viii) disposal of residues;

(ix) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook;

(2) for ships other than tankers—

(i) ballasting or cleaning of bunker fuel tanks;

(ii) discharge of dirty ballast or cleaning water from bunker fuel tanks;

(iii) disposal of residues;

(iv) discharge overboard of bilge water containing oil which has accumulated in machinery spaces while in port, and the routine discharge at sea of bilge water containing oil unless the latter has been entered in the appropriate logbook. In the event of such discharge or escape of oil or oily mixture as is referred to in section 1003 of this title, a statement shall be made in the oil record book of the circumstances of, and reason for, the discharge or escape.

* * * * *

(f) Repealed. Pub. L. 93–119, § 2(9)(C), Oct. 4, 1973, 87 Stat. 428.

(Pub. L. 87–167, § 10, formerly § 9, Aug. 30, 1961, 75 Stat. 404, amended Pub. L. 89–551, § 1(6), Sept. 1, 1966, 80 Stat. 374; renumbered and amended Pub. L. 93–119, § 2(9), Oct. 4, 1973, 87 Stat. 427.)

AMENDMENTS

1973—Subsec. (c). Pub. L. 93–119, § 2(9)(A), inserted in introductory text ", on a tank-to-tank basis,"; in revising first sentence, substituted cls. (1) for tankers and (2) for ships other than tankers for prior cls. (1) to (7), adding items (i)–(iii) and (ix) of cl. (1), incorporating in: item (iv) provisions of former cl. (1) relating to ballasting of and discharge of ballast from cargo tanks of tankers; item (v) provisions of former cl. (2) relating to cleaning of cargo tank of tankers; item (vi) provisions of former cl. (1), substituting "dirty ballast" for "ballast"; item (vii) provisions of former cl. (3) relating to settling in slop tanks and discharge of water from tankers; item (viii) provisions of former cl. (4) relating to disposal from tankers during voyage, of bunker fuel tanks of ships other than tankers of oily residues from slop tanks or other sources; adding item (iv) of cl. (2), incorporating in: items (i) and (ii) provisions of former cl. (5) relating to ballasting, or cleaning during voyage of bunker fuel tanks of ships other than tankers; item (iii) provisions of former cl. (6) relating to disposal from ships other than tankers of oily residues from bunker fuel tanks or other sources; and deleting former cl. (7) relating to accidental or other exceptional discharges or escapes of oil from tankers or ships other than tankers; and deleted from last sentence reference to section 1002(c) of this title.

Subsec. (f). Pub. L. 93–119, § 2(9)(C), repealed subsec. (f) which provided for fines within limits of $500 to $1,000 for noncompliance wtih oil record books requirements and for such fines or imprisonment for term not exceeding six months, or both, for false or misleading entries in any material particular.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1007, 1009 of this title.

§ 1009. Regulations.

The Secretary may make regulations for the administration of sections 1002, 1003, 1004, 1004a, 1005, 1007, and 1008 of this title. (Pub. L. 87–167, § 11, formerly § 10, Aug. 30, 1961, 75 Stat. 404, amended Pub. L. 89–551, § 1(7), Sept. 1, 1966, 80 Stat. 375; renumbered and amended Pub. L. 93–119, § 2(10), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Pub. L. 93–119 included references to sections 1004a and 1005, substituted reference to section 1007 for reference to section 1007(a), and deleted reference to section 1011 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1007 of this title.

§ 1010. Boarding of ships; production of records; evidence of violations by foreign ships.

* * * * *

(b) Should evidence be obtained that a ship registered in another country party to the convention has discharged oil in violation of the convention but outside the territorial sea of the United States, such evidence should be forwarded to the State Department for action in accordance with article X of the convention. (Pub. L. 87–167, § 12, formerly § 11, Aug. 30, 1961, 75 Stat. 404; renumbered and amended Pub. L. 93–119, § 2(11), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Subsec. (b). Pub. L. 93–119 substituted "in violation of the convention but outside the territorial sea of the United States" for "in any prohibited zone".

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1007 of this title.

§ 1011. Repealed. Pub. L. 93–119, § 2(12), Oct. 4, 1973, 87 Stat. 428.

Section, Pub. L. 87–167, § 12, Aug. 30, 1961, 75 Stat. 404; Pub. L. 89–551, § 1(8), Sept. 1, 1966, 90 Stat. 375, described the prohibited zones and provided for publication of reduction or extension of zones.

EFFECTIVE DATE OF REPEAL

See section 1016 of this title.

§ 1013. Appropriations.

Pub. L. 93–119, § 2(13), Oct. 4, 1973, 87 Stat. 428 renumbered section 14 of Pub. L. 87–167, as section 13.

§ 1014. Effect on other laws.

Nothing in this chapter or in regulations issued hereunder shall be construed to modify or amend the provisions of section 1321 of this title, or section 89 of Title 14. (Pub. L. 87–167, § 15, formerly § 16, Aug. 30, 1961, 75 Stat. 407; renumbered and amended Pub. L. 93–119, § 2(14), Oct. 4, 1973, 87 Stat. 428.)

AMENDMENTS

1973—Pub. L. 93–119 substituted "provisions of section 1321 of this title" for "provisions of the Oil Pollution Act, 1924,".

EFFECTIVE DATE OF 1973 AMENDMENT

See section 1016 of this title.

§ 1015. Repealed. Pub. L. 93–119, § 2(15), Oct. 4, 1973, 87 Stat. 428.

Section, Pub. L. 87–167, § 17, Aug. 30, 1961, 75 Stat. 407; Pub. L. 89–551, § 1(10), Sept. 1, 1966, 80 Stat. 375, provided for effective date of Pub. L. 87–167, classified to this chapter and savings provision. Subject matter is now covered by section 1016 of this title.

EFFECTIVE DATE OF REPEAL

See section 1016 of this title.

§ 1016. Effective date of 1973 Amendments.

(a) General provision.

Except as provided in subsection (c) of this section, this amending Act is effective upon the date of its enactment or upon the date amendments to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization on October 21, 1969, October 12, 1971, and October 15, 1971, are ratified or accepted with the advice and consent of the Senate of the United States, whichever is the later date.

(b) Savings provision.

Any rights or liabilities existing on the effective date of this Act shall not be affected by the enactment of this Act. Any regulations or procedures promulgated or effected pursuant to this chapter, as previously amended, remain in effect until modified or superseded under the authority of this chapter, as amended by this Act. Any reference to the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, in any law or regulation shall be deemed to be a reference to the convention as revised or amended by the latest amendments in respect of which the United States has deposited an instrument of ratification or acceptance.

(c) Special provision.

Notwithstanding the foregoing provisions of this section, subsections (d) and (e) of section 1004a of this title, shall be effective upon the date of their enactment or upon the date the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended by the amendments adopted by the Assembly of the Inter-Governmental Marine Consultative Organization on October 15, 1971, enters into force pursuant to article XVI of that convention, as amended, whichever is later; and no authority shall be exercised pursuant to article VI bis (3) and (4) of such amendments prior to the effective date of such subsections. (Pub. L. 93–119, § 3, Oct. 4, 1973, 87 Stat. 428.)

REFERENCES IN TEXT

This amending Act, and this Act, referred to in subsecs. (a) and (b), refer to the Oil Pollution Act Amendments of 1973, which enacted sections 1004a and 1016, amended sections 1001 to 1004, 1005, 1007 to 1010, and 1014, and repealed sections 1011 and 1015 of this title.

Date of its enactment and date of their enactment, referred to in subsecs. (a) and (c), refer to enactment of Pub. L. 93–119 and section 6(d) and (e) of Pub. L. 87–167, as added by section 2(5) of Pub. L. 93–119 (classified to section 1004a(d) and (e) of this title) on Oct. 4, 1973.

Chapter 22.—SEA GRANT COLLEGES AND MARINE SCIENCE DEVELOPMENT

SUBCHAPTER I.—MARINE RESOURCES AND ENGINEERING DEVELOPMENT

§ 1103. Executive responsibilities; utilization of staff, interagency, and non-Government advisory arrangements; consultation with agencies; solicitation of views of non-Federal agencies.

(a) In conformity with the provisions of section 1101 of this title, it shall be the duty of the President with the advice and assistance of the Council to—

* * * * *

(4) insure cooperation and resolve differences arising among departments and agencies of the United States with respect to marine science activities under this subchapter, including differences as to whether a particular project is a marine science activity;

* * * * *

CODIFICATION

Subsec. (a)(4) is set out in this Supplement to correct a typographical error.

AMENDMENTS

1966—Subsec. (a). Pub. L. 89–688 in par. (4), substituted "this title" for "this Act", which, for purposes of codification has been changed to "this subchapter."

§ 1104. Commission on Marine Science, Engineering, and Resources.

* * * * *

(c) Compensation and travel expenses of members.

Members of the Commission appointed from outside the Government shall each receive $100 per diem when engaged in the actual performance of duties of the Commission and reimbursement of travel expenses, including per diem in lieu of subsistence, as authorized in section 5703 of Title 5, for persons employed intermittently. Members of the Commission appointed from within the Government shall serve without additional compensation to that received for their services to the Government but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized in subchapter I of chapter 57 of Title 5.

(d) Appointment and compensation of personnel including temporary services of experts or consultants.

The Commission shall appoint and fix the compensation of such personnel as it deems advisable in accordance with the civil service laws and chapter 51 and subchapter III of chapter 53 of Title 5. In addition, the Commission may secure temporary and intermittent services to the same extent as is authorized for the departments by section 3109 of Title 5 but at rates not to exceed $100 per diem for individuals.

* * * * *

(f) Financial and administrative services of General Services Administration; payment for services; application of Administration regulations for collection of indebtedness of personnel resulting from erroneous payments and for administrative control of funds.

Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) may be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the Administrator of General Services: *Provided*, That the regulations of the General Services Administration for the collection of indebtedness of personnel resulting from erroneous payments (section 5514 of Title 5) shall apply to the collection of erroneous payments made to or on behalf of a Commission employee, and regulations of said Administrator for the administrative control of funds (section 665(g) of Title 31) shall apply to appropriations of the Commission: *And provided further*, That the Commission shall not be required to prescribe such regulations.

* * * * *

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (d), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

CODIFICATION

The following substitutions have been made to reflect the enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, § 1, Sept. 6, 1966, 80 Stat. 378.

In subsec. (c), "section 5703 of Title 5" and "subchapter I of chapter 57 of Title 5" for "section 5 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 73b–2)" and "the Act of June 9, 1949, as amended (5 U.S.C. 835–842)", respectively.

In subsec. (d), "chapter 51 and subchapter III of chapter 53 of Title 5" and "section 3109 of Title 5" for "the Classification Act of 1949, as amended" and "section 15 of the Administrative Expenses Act of 1946 (60 Stat. 810)", respectively.

In subsec. (f), "section 5514 of Title 5" for "5 U.S.C. 46d".

SUBCHAPTER II.—SEA GRANT COLLEGES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 2220a.

§ 1122. Administration by Secretary of Commerce; authorization of appropriations.

(a) The provisions of this subchapter shall be administered by the Secretary of Commerce (hereafter in this subchapter referred to as the "Secretary").

(b)(1) For the purpose of carrying out this subchapter, there is authorized to be appropriated to the Secretary for the fiscal year ending June 30, 1967, not to exceed the sum of $5,000,000, for the fiscal year ending June 30, 1968, not to exceed the sum of $15,000,000, for the fiscal year ending June 30, 1969, not to exceed the sum of $6,000,000, for the fiscal year ending June 30, 1970, not to exceed the sum of $15,000,000, for the fiscal year ending June 30, 1971, not to exceed the sum of $20,000,000, for the fiscal year ending June 30, 1972, not to exceed the sum of $25,000,000, for the fiscal year ending June 30, 1973, not to exceed the sum of $30,000,000, for the fiscal year ending June 30, 1974, not to exceed the sum of $30,000,000, for the fiscal year ending June 30, 1975, not to exceed the sum of $40,000,000, for the fiscal year ending June 30, 1976, not to exceed the sum of $50,000,000, and for each subsequent fiscal

year only such sums as the Congress may hereafter specifically authorize by law.

* * * * *

(As amended Pub. L. 93–73, § 1(1), (5), July 10, 1973, 87 Stat. 170.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–73, § 1(5), substituted "Secretary of Commerce" and "Secretary" for "National Science Foundation" and "Foundation".

Subsec. (b)(1). Pub. L. 93–73, § 1(1), (5), authorized appropriations of $30,000,000; $40,000,000; and $50,000,000 for fiscal years ending June 30, 1974, 1975, and 1976, and substituted "Secretary" for "Foundation".

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out in the credit to this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 1875.

§ 1123. Marine resource development programs.

(a) Cooperation of agencies with Secretary of Commerce.

In carrying out the provisions of this subchapter the Secretary shall consult with those experts engaged in pursuits in the various fields related to the development of marine resources and with all departments and agencies of the Federal Government (including the United States Office of Education in all matters relating to education) interested in, or affected by, activities in any such fields.

(b) Development programs; research; publication of useful information.

The Secretary shall exercise his authority under this subchapter by—

* * * * *

(d) Limitation on federal contribution ratio to total program cost; prohibition against use of program funds to purchase or rent land or repair buildings, docks or vessels.

(1) The total amount of payments under any grant to or contract with any participant in any program to be carried out by such participant under this subchapter shall not exceed 66⅔ per centum of the total cost of such program. The Secretary may grant total payments that exceed such per centum with respect to those programs or portions of programs requested by the Secretary on his own initiative, upon his determination that the requirement for payments of 33⅓ per centum of the cost thereof by the participant would be inequitable relative to the benefits which the participant would receive therefrom. The total amount of payments to be made by the Federal Government under all programs and portions of programs as to which the Secretary shall in any fiscal year exercise his authority under the preceding sentence to reduce or eliminate matching payments by the participant shall not exceed 1 per centum of the funds appropriated under this subchapter for such fiscal year. For purposes of computing the amount of the total cost of any such program furnished by any participant, the Secretary shall include in such computation an amount equal to the reasonable value of any buildings, facilities, equipment, supplies, or services provided by such participant with respect to such program (but not the cost or value of land or of Federal contributions).

(2) No portion of any payment by the Secretary to any participant in any program to be carried out under this subchapter shall be applied to the purchase or rental of any land or the rental, purchase, construction, preservation, or repair of any building, dock, or vessel: *Provided,* That the prohibitions of this paragraph shall not apply to non-self-propelled habitats, buoys, platforms, or other similar devices or structures, used principally for research purposes.

(3) The total amount of payments in any fiscal year by the Secretary to participants within any State shall not exceed 15 per centum of the total amount appropriated to the Secretary for the purposes of this subchapter for such fiscal year.

(e) Allocation of funds to achieve maximum participation by sea grant colleges and agencies throughout the country.

In allocating funds appropriated in any fiscal year for the purposes of this subchapter the Secretary shall endeavor to achieve maximum participation by sea grant colleges and other suitable institutes, laboratories, and public or private agencies throughout the United States, consistent with the purposes of this subchapter.

(f) Duplication and overlapping of Federal programs.

In carrying out his functions under this subchapter, the Secretary shall attempt to support programs in such a manner as to supplement and not duplicate or overlap any existing and related Government activities.

(g) Powers and authority of Secretary of Commerce.

Except as otherwise provided in this subchapter, the Secretary, in carrying out his functions under this subchapter, has the same powers and authority as has the National Science Foundation under the National Science Foundation Act of 1950, as amended, to carry out its functions under that Act.

(h) Use of personnel, services, and facilities of other Federal agencies or instrumentalities.

The head of each department, agency, or instrumentality of the Federal Government is authorized, upon request of the Secretary, to make available to the Secretary from time to time, on a reimbursable basis, such personnel, services, and facilities as may be necessary to assist the Secretary in carrying out his functions under this subchapter.

(i) Definitions.

For the purposes of this subchapter—

* * * * *

(3) the term "sea grant college" means any suitable public or private institution of higher education supported pursuant to the purposes of this subchapter which has major programs devoted to increasing our Nation's utilization of the world's marine resources and which is so designated by the Secretary; and

(4) the term "sea grant program" means (A) any activities of education or research related to the development of marine resources supported by the Secretary by contracts with or grants to institutions of higher education either initiating, or developing existing, programs in fields related to the purposes of this subchapter, (B) any activi-

ties of education or research related to the development of marine resources supported by the Secretary by contracts with or grants to suitable institutes, laboratories, and public or private agencies, and (C) any programs of advisory services oriented toward imparting information in fields related to the development of marine resources supported by the Secretary by contracts with or grants to suitable institutes, laboratories, and public or private agencies.

(As amended Pub. L. 93–73, § 1 (2)–(7), July 10, 1973, 87 Stat. 170.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–73, § 1(2), (5), deleted item (1) designation for provision respecting consultation with experts and Federal agencies, deleted item (2) provision for seeking advice and counsel from the National Council on Marine Resources and Engineering Development, and substituted "Secretary" for "Foundation".

Subsec. (b). Pub. L. 93–73. § 1(5), substituted "Secretary" for "Foundation" and "his authority" for "its authority".

Subsec. (d)(1). Pub. L. 93–73, § 1(3), (5), authorized federal contributions exceeding percentage limitation to programs limited to one percent of appropriations for the fiscal year when reducing or eliminating matching payments by a participant when Secretary determines it would be inequitable relevant to the benefits derived by the participant from the program to require the participant to make a one-third payment of the cost, and substituted "Secretary" for "Foundation" in last sentence.

Subsec. (d)(2). Pub. L. 93–73, § 1(4), (5), made the prohibitions of the paragraph inapplicable to non-self-propelled habitats, buoys, platforms, or other similar devices or structures, used principally for research purposes and substituted "Secretary" for "foundation".

Subsec. (d)(3). Pub. L. 93–73, § 1(5), substituted "Secretary" for "Foundation".

Subsec. (e). Pub. L. 93–73, § 1(5), substituted "Secretary" for "Foundation".

Subsec. (f). Pub. L. 93–73, § 1(5), substituted "Secretary" for "Foundation" and "his functions" for "its functions".

Subsec. (g). Pub. L. 93–73, § 1(6), substituted provisions for exercise of powers and authority under this subchapter by the Secretary rather than the Foundation under the powers and authority of the National Science Foundation Act of 1950, as amended.

Subsec. (h). Pub. L. 93–73, § 1(5), substituted "Secretary" for "Foundation" and "his functions" for "its functions".

Subsec. (i)(3). Pub. L. 93–73, § 1(7), inserted after "marine resources" the words "and which is so designated by the Secretary".

Subsec. (i)(4). Pub. L. 93–73, § 1(5), substituted "Secretary" for "Foundation" in cls. (A)–(C).

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out in the credit to this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1124 of this title.

§ 1124. Study of international marine technology transfer; contract authority; report to President and Congress; authorization of appropriations.

(a) The Secretary of Commerce is authorized and directed to undertake, through the National Sea Grant College Program, a study of the means of sharing, through cooperative programs with other nations, the results of marine research useful in the exploration, development, conservation, and management of marine resources.

(b) In carrying out the study required by subsection (a) of this section, the Secretary is authorized, without regard for paragraphs (1) and (3) of section 1123(d) of this title, to enter into contracts with, and make grants to, institutions, agencies, and organizations described in section 1123(c) of this title.

(c) The Secretary shall submit to the President and to the Congress the results and findings of such study, including specific recommendations, not later than September 30, 1974.

(d) For the purpose of carrying out this section there is authorized to be appropriated not to exceed the sum of $200,000. (As amended Pub. L. 93–73, § 1(8), July 10, 1973, 87 Stat. 170.)

AMENDMENTS

1973—Pub. L. 93–73 substituted provisions for study of international marine technology transfer for prior provisions respecting advisory functions of National Council on Marine Resources and Development.

REORG. PLAN NO. 4 OF 1970

The effective date of Reorg. Plan No. 4 of 1970, set out in the credit to this section in the 1970 ed. of the Code, is Oct. 3, 1970, and not Oct. 30, 1970, as shown therein.

Chapter 23.—POLLUTION CONTROL OF NAVIGABLE WATERS

§§ 1151 to 1165. Transferred.

CODIFICATION

The Federal Water Pollution Control Act, act June 30, 1948, ch. 758, 62 Stat. 1155, formerly classified to this chapter, was amended, reorganized, and expanded by Pub. L. 92–500, Oct. 18, 1972, 86 Stat. 816, and is now classified to chapter 26 (§ 1251 et seq.) of this title.

EXECUTIVE ORDER NO. 11548

Ex. Ord. No. 11548, July 20, 1970, 35 F.R. 11677, set out as a note under section 1151, which related to the delegation of Presidential functions, was superseded by Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, set out as a note under section 1321 of this title.

§ 1165a. Contained spoil disposal facilities.

* * * * *

(d) Waiver of construction costs contribution from non-Federal interests; findings of participation in waste treatment facilities for general geographical area and compliance with water quality standards; waiver of payments in event of written agreement before occurrence of findings.

The requirement for appropriate non-Federal interest or interests to furnish an agreement to contribute 25 per centum of the construction costs as set forth in subsection (c) of this section shall be waived by the Secretary of the Army upon a finding by the Administrator of the Environmental Protection Agency that for the area to which such construction applies, the State or States involved, interstate agency, municipality, and other appropriate political subdivision of the State and industrial concerns are participating in and in compliance with an approved plan for the general geographical area of the dredging activity for construction, modification, expansion, or rehabilitation of waste treatment facilities and the Administrator has found that applicable water quality standards are not being violated. In the event such findings occur after the appropriate non-Federal interest or interests have entered into the agreement required by subsection (c) of this section, any payments due after the date of such

findings as part of the required local contribution of 25 per centum of the construction costs shall be waived by the Secretary of the Army.

* * * * *

(As amended Pub. L. 93–251, title I, § 23, Mar. 7, 1974, 88 Stat. 20.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93–251 added provision for waiver of payments in event of a written agreement before occurrence of findings.

§§ 1166 to 1175. Transferred.

CODIFICATION

Sections 1166 to 1175, act June 30, 1948, ch. 758, §§ 16–24, 26, constituted part of the Water Pollution Control Act, and are now classified to chapter 26 of this title.

Chapter 24.—VESSEL BRIDGE-TO-BRIDGE COMMUNICATIONS [NEW]

Sec.
1201. Statement of purpose.
1202. Definitions.
1203. Radiotelephone requirement.
(a) Vessel coverage; exchange of navigational information.
(b) Vessels upon navigable waters of United States inside high seas lines.
1204. Radiotelephone for exclusive use of master, person in charge, or pilot; frequency listening watch; portable radiotelephone equipment.
1205. Radiotelephone capability; maintenance; restoration; consequences of loss: navigation of vessel.
1206. Exemptions; terms and conditions.
1207. Regulations.
(a) Operating and technical conditions and characteristics; frequencies, emission, and power of radiotelephone equipment.
(b) Enforcement.
1208. Penalties.
(a) Master, person in charge, or pilot subject to penalty.
(b) Vessel subject to penalty; jurisdiction.
(c) Remission or mitigation.

§ 1201. Statement of purpose.

It is the purpose of this chapter to provide a positive means whereby the operators of approaching vessels can communicate their intentions to one another through voice radio, located convenient to the operator's navigation station. To effectively accomplish this, there is need for a specific frequency or frequencies dedicated to the exchange of navigational information, on navigable waters of the United States. (Pub. L. 92–63, § 2, Aug. 4, 1971, 85 Stat. 164.)

SHORT TITLE

Section 1 of Pub. L. 92–63 provided: "That this Act [enacting this chapter] may be cited as the 'Vessel Bridge-to-Bridge Radiotelephone Act'."

EFFECTIVE DATE

Section 10 of Pub. L. 92–63 provided that: "This Act [this chapter] shall become effective May 1, 1971, or six months after the promulgation of regulations which would implement its provisions, whichever is later."

§ 1202. Definitions.

For the purpose of this chapter—

(1) "Secretary" means the Secretary of the Department in which the Coast Guard is operating;

(2) "power-driven vessel" means any vessel propelled by machinery; and

(3) "towing vessel" means any commerical vessel engaged in towing another vessel astern, alongside, or by pushing ahead.

(Pub. L. 92–63, § 3, Aug. 4, 1971, 85 Stat. 164.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

§ 1203. Radiotelephone requirement.

(a) Vessel coverage; exchange of navigational information.

Except as provided in section 1206 of this title—

(1) every power-driven vessel of three hundred gross tons and upward while navigating;

(2) every vessel of one hundred gross tons and upward carrying one or more passengers for hire while navigating;

(3) every towing vessel of twenty-six feet or over in length while navigating; and

(4) every dredge and floating plant engaged in or near a channel or fairway in operations likely to restrict or affect navigation of other vessels—

shall have a radiotelephone capable of operation from its navigational bridge or, in the case of a dredge, from its main control station and capable of transmitting and receiving on the frequency or frequencies within the 156–162 Mega-Hertz band using the classes of emissions designated by the Federal Communications Commission, after consultation with other cognizant agencies, for the exchange of navigational information.

(b) Vessels upon navigable waters of United States inside high seas lines.

The radiotelephone required by subsection (a) of this section shall be carried on board the described vessels, dredges, and floating plants upon the navigable waters of the United States inside the lines established pursuant to section 151 of this title. (Pub. L. 92–63, § 4, Aug. 4, 1971, 85 Stat. 164.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

§ 1204. Radiotelephone for exclusive use of master, person in charge, or pilot; frequency listening watch; portable radiotelephone equipment.

The radiotelephone required by this chapter is for the exclusive use of the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency. Nothing contianed herein shall be interpreted as precluding the use of portable radiotelephone equipment to satisfy the requirements of this chapter. (Pub. L. 92–63, § 5, Aug. 4, 1971, 85 Stat. 165.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

§ 1205. Radiotelephone capability; maintenance; restoration; consequences of loss: navigation of vessel.

Whenever radiotelephone capability is required by this chapter, a vessel's radiotelephone equipment shall be maintained in effective operating condition. If the radiotelephone equipment carried aboard a vessel ceases to operate, the master shall exercise due diligence to restore it or cause it to be restored to effective operating condition at the earliest practicable time. The failure of a vessel's radiotelephone equipment shall not, in itself, constitute a violation of this chapter, nor shall it obligate the master of any vessel to moor or anchor his vessel; however, the loss of radiotelephone capability shall be given consideration in the navigation of the vessel. (Pub. L. 92–63, § 6, Aug. 4, 1971, 85 Stat. 165.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

§ 1206. Exemptions; terms and conditions.

The Secretary may, if he considers that marine navigational safety will not be adversely affected or where a local communication system fully complies with the intent of this concept but does not conform in detail, issue exemptions from any provisions of this chapter, on such terms and conditions as he considers appropriate. (Pub. L. 92–63, § 7, Aug. 4, 1971, 85 Stat. 165.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1203 of this title.

§ 1207. Regulations.

(a) Operating and technical conditions and characteristics; frequencies, emission, and power of radiotelephone equipment.

The Federal Communications Commission shall, after consultation with other cognizant agencies, prescribe regulations necessary to specify operating and technical conditions and characteristics including frequencies, emission, and power of radiotelephone equipment required under this chapter.

(b) Enforcement.

The Secretary shall, subject to the concurrence of the Federal Communications Commission, prescribe regulations for the enforcement of this chapter. (Pub. L. 92–63, § 8, Aug. 4, 1971, 85 Stat. 165.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

§ 1208. Penalties.

(a) Master, person in charge, or pilot subject to penalty.

Whoever, being the master or person in charge of a vessel subject to this chapter, fails to enforce or comply with this chapter or the regulation, hereunder; or

Whoever, being designated by the master or person in charge of a vessel subject to this chapter to pilot or direct the movement of the vessel, fails to enforce or comply with this chapter or the regulations hereunder—

Is liable to a civil penalty of not more than $500 to be assessed by the Secretary.

(b) Vessels subject to penalty; jurisdiction.

Every vessel navigating in violation of this chapter or the regulations hereunder is liable to a civil penalty of not more than $500 to be assessed by the Secretary for which the vessel may be proceeded against in any district court of the United States having jurisdiction.

(c) Remission or mitigation.

Any penalty assessed under this section may be remitted or mitigated by the Secretary upon such terms as he may deem proper. (Pub. L. 92–63, § 9, Aug. 4, 1971, 85 Stat. 165.)

EFFECTIVE DATE

Section effective May 1, 1971, or six months after promulgation of implementing regulations, whichever is later, see section 10 of Pub. L. 92–63, set out as a note under section 1201 of this title.

Chapter 25.—PORTS AND WATERWAYS SAFETY PROGRAM [NEW]

Sec.
1221. Prevention of damage to vessels, bridges, and other structures; protection of navigable waters from environmental harm; authority of Secretary.
1222. General provisions.
(a) Definition.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 section 1806.

§ 1221. Prevention of damage to vessels, bridges, and other structures; protection of navigable waters from environmental harm; authority of Secretary.

In order to prevent damage to, or the destruction or loss of any vessel, bridge, or other structure on or in the navigable waters of the United States, or any land structure or shore area immediately adjacent to those waters; and to protect the navigable waters and the resources therein from environmental harm resulting from vessel or structure damage, destruction, or loss, the Secretary of the department in which the Coast Guard is operating may—

(1) establish, operate, and maintain vessel traffic services and systems for ports, harbors, and other waters subject to congested vessel traffic;

(2) require vessels which operate in an area of a vessel traffic service or system to utilize or comply with that service or system, including the carrying or installation of electronic or other devices necessary for the use of the service or system;

(3) control vessel traffic in areas which he determines to be especially hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

(i) specifying times of entry, movement, or departure to, from, within, or through ports, harbors, or other waters;

(ii) establishing vessel traffic routing schemes;

(iii) establishing vessel size and speed limitations and vessel operating conditions; and

(iv) restricting vessel operation, in a hazardous area or under hazardous conditions, to vessels which have particular operating characteristics and capabilities which he considers necessary for safe operation under the circumstances;

(4) direct the anchoring, mooring, or movement of a vessel when necessary to prevent damage to or by that vessel or her cargo, stores, supplies, or fuel;

(5) require pilots on self-propelled vessels engaged in the foreign trades in areas and under circumstances where a pilot is not otherwise required by State law to be on board until the State having jurisdiction of an area involved establishes a requirement for a pilot in that area or under the circumstances involved;

(6) establish procedures, measures, and standards for the handling, loading, discharge, storage, stowage, and movement, including the emergency removal, control and disposition, of explosives or other dangerous articles or substances (including the substances described in section 391a(2)(A), (B), and (C) of Title 46 on structures subject to this chapter;

(7) prescribe minimum safety equipment requirements for structures subject to this chapter to assure adequate protection from fire, explosion, natural disasters, and other serious accidents or casualties;

(8) establish water or waterfront safety zones or other measures for limited, controlled, or conditional access and activity when necessary for the protection of any vessel, structure, waters, or shore area; and

(9) establish procedures for examination to assure compliance with the minimum safety equipment requirements for structures.

(Pub. L. 92–340, title I, § 101, July 10, 1972, 86 Stat. 424.)

SHORT TITLE

Section 1 of Pub. L. 92–340 provided that: "This Act [enacting this chapter and amending section 391a of Title 46 and enacting provisions set out as notes under section 391a of Title 46] may be cited as the 'Ports and Waterways Safety Act of 1972'."

ESTABLISHMENT OF VESSEL TRAFFIC CONTROL SYSTEM FOR PRINCE WILLIAM SOUND AND VALDEZ, ALASKA

Pub. L. 93–153, title IV, § 402, Nov. 16, 1973, 87 Stat. 589, provided that: "The Secretary of the Department in which the Coast Guard is operating is hereby directed to establish a vessel traffic control system for Prince William Sound and Valdez, Alaska, pursuant to authority contained in title I of the Ports and Waterways Safety Act of 1972 (86 Stat. 424, Public Law 92–340) [this chapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1222 of this title.

§ 1222. General provisions.

(a) Definition.

For the purpose of this Act, the term "United States" includes the fifty States, the District of Columbia, Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(b) Authority under other provisions and better safety requirements prescribed by other agencies unaffected.

Nothing contained in this chapter supplants or modifies any treaty or Federal statute or authority granted thereunder, nor does it prevent a State or political subdivision thereof from prescribing for structures only higher safety equipment requirements or safety standards than those which may be prescribed pursuant to this chapter.

(c) Consultation with appropriate agencies.

In the exercise of his authority under this chapter, the Secretary shall consult with other Federal agencies, as appropriate, in order to give due consideration to their statutory and other responsibilities, and to assure consistency of regulations applicable to vessels, structures, and areas covered by this chapter. The Secretary may also consider, utilize, and incorporate regulations or similar directory materials issued by port or other State and local authorities.

(d) Provisions of chapter inapplicable to Panama Canal; delegation of powers with respect to Saint Lawrence Seaway.

This chapter shall not be applicable to the Panama Canal. The authority granted to the Secretary under section 1221 of this title shall not be delegated with respect to the Saint Lawrence Seaway to any agency other than the Saint Lawrence Seaway Development Corporation. Any other authority granted the Secretary under this chapter shall be delegated to the Saint Lawrence Seaway Development Corporation to the extent that the Secretary determines such delegation is necessary for the proper operation of the Seaway.

(e) Factors considered in the issue of regulations.

In carrying out his duties and responsibilities under this chapter to promote the safe and efficient conduct of maritime commerce the Secretary shall consider fully the wide variety of interests which may be affected by the exercise of his authority hereunder. In determining the need for, and the substance of, any rule or regulation or the exercise of other authority hereunder the Secretary shall, among other things, consider—

(1) the scope and degree of the hazards;

(2) vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) environmental factors;

(5) economic impact and effects;

(6) existing vessel traffic control systems, services, and schemes; and

(7) local practices and customs, including voluntary arrangements and agreements within the maritime community.

(Pub. L. 92–340, title I, § 102, July 10, 1972, 86 Stat. 425.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), refers to Pub. L. 92–340. For distribution of Pub. L. 92–340 in the Code, see short title note under section 1221 of this title.

§ 1223. Investigatory powers of Secretary; production of witnesses and documents; proceedings for compliance with subpenas; fees and allowances of witnesses.

The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to, any structure subject to this chapter, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. In any investigation under this chapter, the Secretary may issue a subpena to require the attendance of any witness and the production of documents and other evidence. In case of refusal to obey a subpena issued to any person, the Secretary may request the Attorney General to invoke the aid of the appropriate district court of the United States to compel compliance. Witnesses may be paid fees for travel and attendance at rates not exceeding those allowed in a district court of the United States. (Pub. L. 92–340, title I, § 103, July 10, 1972, 86 Stat. 426.)

§ 1224. Rules and regulations.

The Secretary may issue reasonable rules, regulations, and standards necessary to implement this chapter. In the exercise of his rulemaking authority the Secretary is subject to the provisions of chapters 5 and 7 of Title 5. In preparing proposed rules, regulations, and standards, the Secretary shall provide an adequate opportunity for consultation and comment to State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties. (Pub. L. 92–340, title I, § 104, July 10, 1972, 86 Stat. 427.)

§ 1225. Report to Congress.

The Secretary shall, within one year after July 10, 1972, report to the Congress his recommendations for legislation which may be necessary to achieve coordination and/or eliminate duplication between the functions authorized by this Act and the functions of any other agencies. (Pub. L. 92–340, title I, § 105, July 10, 1972, 86 Stat. 427.)

REFERENCES IN TEXT

This Act, referred to in text, refers to Pub. L. 92–340. For distribution of Pub. L. 92–340 in the Code, see short title note under section 1221 of this title.

§ 1226. Civil penalties; proceedings for collection.

Whoever violates a regulation issued under this chapter shall be liable to a civil penalty of not more than $10,000. The Secretary may assess and collect any civil penalty incurred under this chapter and, in his discretion, remit, mitigate, or compromise any penalty. Upon failure to collect or compromise a penalty, the Secretary may request the Attorney General to commence an action for collection in any district court of the United States. A vessel used or employed in a violation of a regulation under this chapter shall be liable in rem and may be proceeded against in any district court of the United States having jurisdiction. (Pub. L. 92–340, title I, § 106, July 10, 1972, 86 Stat. 427.)

§ 1227. Criminal penalties.

Whoever willfully violates a regulation issued under this chapter shall be fined not less than $5,000 or more than $50,000 or imprisoned for not more than five years, or both. (Pub. L. 92–340, title I, § 107, July 10, 1972, 86 Stat. 427.)

Chapter 26.—WATER POLLUTION PREVENTION AND CONTROL [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1402, 1502, 1503 of this title, title 15 section 636; title 16 section 1456; title 40 App., section 214; title 42 section 4905; title 43 sections 421h, 1577, 1595, 1597; title 49 section 1604.

SUBCHAPTER I—RESEARCH AND RELATED PROGRAMS

§ 1251. Congressional declaration of goals and policy.

(a) The objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this chapter—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this chapter, the Administrator of the Environmental Protection Agency (hereinafter in this chapter called "Administrator") shall administer this chapter.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this chapter shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government. (June 30, 1948, ch. 758, title I, § 101, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 816.)

CODIFICATION

The Federal Water Pollution Control Act, comprising this chapter, was originally enacted by act June 30, 1948, ch. 758, 62 Stat. 1155, and amended by acts July 17, 1952, ch. 927, 66 Stat. 755; July 9, 1956, ch. 518, 70 Stat. 498; June 25, 1959, Pub. L. 86–70, 73 Stat. 141; July 12, 1960, Pub. L. 86–624, 74 Stat. 411; July 20, 1961, Pub. L. 87–88, 75 Stat. 204; Oct. 2, 1965, Pub. L. 89–234, 79 Stat. 903; Nov. 3, 1966, Pub. L. 89–753, 80 Stat. 1246; Apr. 3, 1970, Pub. L. 91–224, 84 Stat. 91; Dec. 31, 1970, Pub. L. 91–611, 84 Stat. 1818; July 9, 1971, Pub. L. 92–50, 85 Stat. 124; Oct. 13, 1971, Pub. L. 92–137, 85 Stat. 379; Mar. 1, 1972, Pub. L. 92–240, 86 Stat. 47, and was formerly classified first to section 466 et seq. of this title and later to section 1151 et seq. of this title. The act is shown herein, however, as having been added by Pub. L. 92–500 without reference to such intervening amendments because of the extensive amendment, reorganization, and expansion of the act's provisions by Pub. L. 92–500.

SHORT TITLE

Section 1 of Pub. L. 92-500 provided that: "That this Act [which enacted this chapter, amended section 24 of Title 12, Banks and Banking, sections 633 and 636 of Title 15, Commerce and Trade, and section 711 of Title 31, Money and Finance, and enacted provisions set out as notes under this section and sections 1281 and 1361 of this title] may be cited as the 'Federal Water Pollution Control Act Amendments of 1972'."

Section 518 of act June 30, 1948, ch. 758, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 896, provided that: "This Act [this chapter] may be cited as the 'Federal Water Pollution Control Act'."

SAVINGS PROVISIONS

Section 4 of Pub. L. 92-500 provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall abate by reason of the taking effect of the amendment made by section 2 of this Act [which enacted this chapter]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972], and pertaining to any functions, powers, requirements, and duties under the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall continue in full force and effect after the date of enactment of this Act [Oct. 18, 1972] until modified or rescinded in accordance with the Federal Water Pollution Control Act as amended by this Act [this chapter].

"(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act [Oct. 18, 1972] shall remain applicable to all grants made from funds authorized for the fiscal year ending June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act [section 1282 of this title] and in subsection (c) of section 3 of this Act."

SEPARABILITY OF PROVISIONS

Section 512 of act June 30, 1948, ch. 758, title V, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894, provided that: "If any provision of this Act [this chapter], or the application of any provision of this Act [this chapter] to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act [this chapter], shall not be affected thereby."

OVERSIGHT STUDY

Section 5 of Pub. L. 92-500 provided that: "In order to assist the Congress in the conduct of oversight responsibilities the Comptroller General of the United States shall conduct a study and review of the research, pilot, and demonstration programs related to prevention and control of water pollution, including waste treatment and disposal techniques, which are conducted, supported, or assisted by any agency of the Federal Government pursuant to any Federal law or regulation and assess conflicts between, and the coordination and efficacy of, such programs, and make a report to the Congress thereon by October 1, 1973."

INTERNATIONAL TRADE STUDY

Section 6 of Pub. L. 92-500 provided that:

"(a) The Secretary of Commerce, in cooperation with other interested Federal agencies and with representatives of industry and the public, shall undertake immediately an investigation and study to determine—

"(1) the extent to which pollution abatement and control programs will be imposed on, or voluntarily undertaken by, United States manufacturers in the near future and the probable short- and long-range effects of the costs of such programs (computed to the greatest extent practicable on an industry-by-industry basis) on (A) the production costs of such domestic manufacturers, and (B) the market prices of the goods produced by them;

"(2) the probable extent to which pollution abatement and control programs will be implemented in foreign industrial nations in the near future and the extent to which the production costs (computed to the greatest extent practicable on an industry-by-industry basis) of foreign manufacturers will be affected by the costs of such programs;

"(3) the probable competitive advantage which any article manufactured in a foreign nation will likely have in relation to a comparable article made in the United States if that foreign nation—

"(A) does not require its manufacturers to implement pollution abatement and control programs.

"(B) requires a lesser degree of pollution abatement and control in its programs, or

"(C) in any way reimburses or otherwise subsidizes its manufacturers for the costs of such program;

"(4) alternative means by which any competitive advantage accruing to the products of any foreign nation as a result of any factor described in paragraph (3) may be (A) accurately and quickly determined, and (B) equalized, for example, by the imposition of a surcharge or duty, on a foreign product in an amount necessary to compensate for such advantage; and

"(5) the impact, if any, which the imposition of a compensating tariff of other equalizing measure may have in encouraging foreign nations to implement pollution and abatement control programs.

"(b) The Secretary shall make an initial report to the President and Congress within six months after the date of enactment of this section [Oct. 18, 1972] of the results of the study and investigation carried out pursuant to this section and shall make additional reports thereafter at such times as he deems appropriate taking into account the development of relevant data, but not less than once every twelve months."

INTERNATIONAL AGREEMENTS

Section 7 of Pub. L. 92-500 provided that: "The President shall undertake to enter into international agreement to apply uniform standards of performance for the control of the discharge and emission of pollutants from new sources, uniform controls over the discharge and emission of toxic pollutants, and uniform controls over the discharge of pollutants into the ocean. For this purpose the President shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums."

NATIONAL POLICIES AND GOALS STUDY

Section 10 of Pub. L. 92-500 provided that: "The President shall make a full and complete investigation and study of all of the national policies and goals established by law for the purpose of determining what the relationship should be between these policies and goals, taking into account the resources of the Nation. He shall report the results of such investigation and study together with his recommendations to Congress not later than two years after the date of enactment of this Act [Oct. 18, 1972]. There is authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this section."

EFFICIENCY STUDY

Section 11 of Pub. L. 92-500 provided that: "The President shall conduct a full and complete investigation and study of ways and means of utilizing in the most effective manner all of the various resources, facilities, and personnel of the Federal Government in order most efficiently to carry out the objective of the Federal Water Pollution Control Act [this chapter]. He shall utilize in conducting

such investigation and study, the General Accounting Office. He shall report the results of such investigation and study together with his recommendations to Congress not later than two hundred and seventy days after the date of enactment of this Act [Oct. 18, 1972]."

SEX DISCRIMINATION

Section 13 of Pub. L. 92–500 provided that: "No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Act [which principally enacted this chapter and provisions set out as notes under this section and sections 1281 and 1361 of this title] the Federal Water Pollution Control Act [this chapter], or the Environmental Financing Act [set out as a note under section 1281 of this title]. This section shall be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42, The Public Health and Welfare]. However, this remedy is not exclusive and will not prejudice or cut off any other legal remedies available to a discriminatee."

PREVENTION, CONTROL AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

EX. ORD. NO. 11742. DELEGATION OF FUNCTIONS TO SECRETARY OF STATE RESPECTING THE NEGOTIATION OF INTERNATIONAL AGREEMENTS RELATING TO THE ENHANCEMENT OF THE ENVIRONMENT

Ex. Ord. No. 11742, Oct. 23, 1973, 38 F.R. 29457, provided: Under and by virtue of the authority vested in me by section 301 of title 3 of the United States Code and as President of the United States, I hereby authorize and empower the Secretary of State, in coordination with the Council on Environmental Quality, the Environmental Protection Agency, and other appropriate Federal agencies, to perform, without the approval, ratification, or other action of the President, the functions vested in the President by Section 7 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500; 86 Stat. 898) with respect to international agreements relating to the enhancement of the environment.

RICHARD NIXON.

§ 1252. Comprehensive programs for water pollution control.

(a) The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b)(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage for regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefit of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this chapter shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Power Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c)(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after October 18, 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means

of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 1288 of this title, and any State plan developed pursuant to section 1313(e) of this title.

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof as well as the lands drained thereby. (June 30, 1948, ch. 758, title I, § 102, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 817.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252a, 1375 of this title.

§ 1252a. Reservoir projects, water storage; modification; storage for other than for water quality, opinion of Federal agency, committee resolutions of approval; provisions inapplicable to projects with certain prescribed water quality benefits in relation to total project benefits.

In the case of any reservoir project authorized for construction by the Corps of Engineers, Bureau of Reclamation, or other Federal agency when the Administrator of the Environmental Protection Agency determines pursuant to section 1252(b) of this title that any storage in such project for regulation of streamflow for water quality is not needed, or is needed in a different amount, such project may be modified accordingly by the head of the appropriate agency, and any storage no longer required for water quality may be utilized for other authorized purposes of the project when, in the opinion of the head of such agency, such use is justified. Any such modification of a project where the benefits attributable to water quality are 15 per centum or more but not greater than 25 per centum of the total project benefits shall take effect only upon the adoption of resolutions approving such modification by the appropriate committees of the Senate and House of Representatives. The provisions of the section shall not apply to any project where the benefits attributable to water quality exceed 25 per centum of the total project benefits. (Pub. L. 93–251, title I, § 65, Mar. 7, 1974, 88 Stat. 30.)

CODIFICATION

Section was enacted as a part of Water Resources Development Act of 1974, and not as a part of Federal Water Pollution Control Act, which comprises this chapter.

§ 1253. Interstate cooperation and uniform laws.

(a) The Administrator shall encourage cooperative activities by the States for the prevention, reduction, and elimination of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention, reduction, and elimination of pollution; and encourage compacts between States for the prevention and control of pollution.

(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress. (June 30, 1948, ch. 758, title I, § 103, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 818.)

§ 1254. Research, investigations, training, and information.

(a) Establishment of national programs; cooperation; investigations; water quality surveillance system; reports.

The Administrator shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall—

(1) in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution;

(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the Geological Survey, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 1375 of this title; and

(6) initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for

measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter; and shall transmit a report on the results of such research to the Congress not later than January 1, 1974.

(b) Authorized activities of Administrator.

In carrying out the provisions of subsection (a) of this section the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(2) cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in paragraph (1) of subsection (a) of this section;

(3) make grants to State water pollution control agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals, for purposes stated in paragraph (1) of subsection (a) of this section;

(4) contract with public or private agencies, institutions, organizations, and individuals, without regard to section 529 of Title 31 and section 5 of Title 41, referred to in paragraph (1) of subsection (a) of this section;

(5) establish and maintain research fellowships at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying water quality and other information pertaining to pollution and the prevention, reduction, and elimination thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the prevention, reduction, and elimination of pollution.

(c) Research and studies on harmful effects of pollutants; cooperation with Secretary of Health, Education, and Welfare.

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants. In order to avoid duplication of effort, the Administrator shall, to the extent practicable, conduct such research in cooperation with and through the facilities of the Secretary of Health, Education, and Welfare.

(d) Sewage treatment; identification and measurement of effects of pollutants; augmented streamflow.

In carrying out the provisions of this section the Administrator shall develop and demonstrate under varied conditions (including conducting such basic and applied research, studies, and experiments as may be necessary):

(1) Practicable means of treating municipal sewage, and other waterborne wastes to implement the requirements of section 1281 of this title;

(2) Improved methods and procedures to identify and measure the effects of pollutants, including those pollutants created by new technological developments; and

(3) Methods and procedures for evaluating the effects on water quality of augmented streamflows to control pollution not susceptible to other means of prevention, reduction, or elimination.

(e) Field laboratory and research facilities.

The Administrator shall establish, equip, and maintain field laboratory and research facilities, including, but not limited to, one to be located in the northeastern area of the United States, one in the Middle Atlantic area, one in the southeastern area, one in the midwestern area, one in the southwestern area, one in the Pacific Northwest, and one in the State of Alaska, for the conduct of research, investigations, experiments, field demonstrations and studies, and training relating to the prevention, reduction and elimination of pollution. Insofar as practicable, each such facility shall be located near institutions of higher learning in which graduate training in such research might be carried out. In conjunction with the development of criteria under section 1343 of this title, the Administrator shall construct the facilities authorized for the National Marine Water Quality Laboratory established under this subsection.

(f) Great Lakes water quality research.

The Administrator shall conduct research and technical development work, and make studies, with respect to the quality of the waters of the Great Lakes, including an analysis of the present and projected future water quality of the Great Lakes under varying conditions of waste treatment and disposal, an evaluation of the water quality needs of those to be served by such waters, an evaluation of municipal, industrial, and vessel waste treatment and disposal practices with respect to such waters, and a study of alternate means of solving pollution problems (including additional waste treatment measures) with respect to such waters.

(g) Treatment works pilot training programs; employment needs forecasting; training projects and grants; research fellowships; technical training; report to the President and transmittal to Congress.

(1) For the purpose of providing an adequate supply of trained personnel to operate and maintain existing and future treatment works and related activities, and for the purpose of enhancing substantially the proficiency of those engaged in such activities, the Administrator shall finance pilot programs, in cooperation with State and interstate agencies, municipalities, educational institutions, and other organizations and individuals, of manpower development and training and retraining of persons in, on entering into, the field of operation and maintenance of treatment works and related activities. Such program and any funds expended

for such a program shall supplement, not supplant, other manpower and training programs and funds available for the purposes of this paragraph. The Administrator is authorized, under such terms and conditions as he deems appropriate, to enter into agreements with one or more States, acting jointly or severally, or with other public or private agencies or institutions for the development and implementation of such a program.

(2) The Administrator is authorized to enter into agreements with public and private agencies and institutions, and individuals to develop and maintain an effective system for forecasting the supply of, and demand for, various professional and other occupational categories needed for the prevention, reduction, and elimination of pollution in each region, State, or area of the United States and, from time to time, to publish the results of such forecasts.

(3) In furtherance of the purposes of this chapter, the Administrator is authorized to—

(A) make grants to public or private agencies and institutions and to individuals for training projects, and provide for the conduct of training by contract with public or private agencies and institutions and with individuals without regard to section 529 of Title 31 and section 5 of Title 41;

(B) establish and maintain research fellowships in the Environmental Protection Agency with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most promising research fellows; and

(C) provide, in addition to the program established under paragraph (1) of this subsection, training in technical matters relating to the causes, prevention, reduction, and elimination of pollution for personnel of public agencies and other persons with suitable qualifications.

(4) The Administrator shall submit, through the President, a report to the Congress not later than December 31, 1973, summarizing the actions taken under this subsection and the effectiveness of such actions, and setting forth the number of persons trained, the occupational categories for which training was provided, the effectiveness of other Federal, State, and local training programs in this field, together with estimates of future needs, recommendations on improving training programs, and such other information and recommendations, including legislative recommendations, as he deems appropriate.

(h) Lake pollution.

The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(i) Oil pollution control studies.

The Administrator, in cooperation with the Secretary of the department in which the Coast Guard is operating, shall—

(1) engage in such research, studies, experiments, and demonstrations as he deems appropriate, relative to the removal of oil from any waters and to the prevention, control, and elimination of oil and hazardous substances pollution;

(2) publish from time to time the results of such activities; and

(3) from time to time, develop and publish in the Federal Register specifications and other technical information on the various chemical compounds used in the control of oil and hazardous substances spills.

In carrying out this subsection, the Administrator may enter into contracts with, or make grants to, public or private agencies and organizations and individuals.

(j) Solid waste disposal equipment for vessels.

The Secretary of the department in which the Coast Guard is operating shall engage in such research, studies, experiments, and demonstrations as he deems appropriate relative to equipment which is to be installed on board a vessel and is designed to receive, retain, treat, or discharge human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes with particular emphasis on equipment to be installed on small recreational vessels. The Secretary of the department in which the Coast Guard is operating shall report to congress the results of such research, studies, experiments, and demonstrations prior to the effective date of any regulations established under section 1322 of this title. In carrying out this subsection the Secretary of the department in which the Coast Guard is operating may enter into contracts with, or make grants to, public or private organizations and individuals.

(k) Land acquisition.

In carrying out the provisions of this section relating to the conduct by the Administrator of demonstration projects and the development of field laboratories and research facilities, the Administrator may acquire land and interests therein by purchase, with appropriated or donated funds, by donation, or by exchange for acquired or public lands under his jurisdiction which he classifies as suitable for disposition. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Administrator as the circumstances require.

(l) Collection and dissemination of scientific knowledge on effects and control of pesticides in water.

(1) The Administrator shall, after consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, as soon as practicable but not later than January 1, 1973, develop and issue to the States for the purpose of carrying out this chapter the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.

(2) The President shall, in consultation with appropriate local, State, and Federal agencies, public and private organizations, and interested individuals, conduct studies and investigations of methods to control the release of pesticides into the environment which study shall include examination of the persistency of pesticides in the water environment and alternatives thereto. The President shall submit reports, from time to time, on such investigations to Congress together with his recommendations for any necessary legislation.

(m) Waste oil disposal study.

(1) The Administrator shall, in an effort to prevent degradation of the environment from the disposal of waste oil, conduct a study of (A) the generation of used engine, machine, cooling, and similar waste oil, including quantities generated, the nature and quality of such oil, present collecting metohds and disposal practices, and alternate uses of such oil; (B) the long-term, chronic biological effects of the disposal of such waste oil; and (C) the potential market for such oils, including the economic and legal factors relating to the sale of products made from such oils, the level of subsidy, if any, needed to encourage the purchase by public and private nonprofit agencies of products from such oil, and the practicability of Federal procurement, on a priority basis, of products made from such oil. In conducting such study, the Administrator shall consult with affected industries and other persons.

(2) The Administrator shall report the preliminary results of such study to Congress within six months after October 18, 1972, and shall submit a final report to Congress within 18 months after such date.

(n) Comprehensive studies of effects of pollution on estuaries and estuarine zones; reports.

(1) The Administrator shall, in cooperation with the Secretary of the Army, the Secretary of Agriculture, the Water Resources Council, and with other appropriate Federal, State, interstate, or local public bodies and private organizations, institutions, and individuals, conduct and promote, and encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes. Such studies shall also consider the effect of demographic trends, the exploitation of mineral resources and fossil fuels, land and industrial development, navigation, flood and erosion control, and other uses of estuaries and estuarine zones upon the pollution of the waters therein.

(2) In conducting such studies, the Administrator shall assemble, coordinate, and organize all existing pertinent information on the Nation's estuaries and estuarine zones; carry out a program of investigations and surveys to supplement existing information in representative estuaries and estuarine zones; and identify the problems and areas where further research and study are required.

(3) The Administrator shall submit to Congress, from time to time, reports of the studies authorized by this subsection but at least one such report during any three year period. Copies of each such report shall be made available to all interested parties, public and private.

(4) For the purpose of this subsection, the term "estuarine zones" means an environmental system consisting of an estuary and those transitional areas which are consistently influenced or affected by water from an estuary such as, but not limited to, salt marshes, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels, and the term "estuary" means all or part of the mouth of a river or stream or other body of water having unimpaired natural connection with open sea and within which the sea water is measurably diluted with fresh water derived from land drainage.

(o) Methods of reducing total flow of sewage and unnecessary water consumption; reports.

(1) The Administrator shall conduct research and investigations on devices, systems, incentives, pricing policy, and other methods of reducing the total flow of sewage, including, but not limited to, unnecessary water consumption in order to reduce the requirements for, and the costs of, sewage and waste treatment services. Such research and investigations shall be directed to develop devices, systems, policies, and methods capable of achieving the maximum reduction of unnecessary water consumption.

(2) The Administrator shall report the preliminary results of such studies and investigations to the Congress within one year after October 18, 1972, and annually thereafter in the report required under subsection (a) of section 1375 of this title. Such report shall include recommendations for any legislation that may be required to provide for the adoption and use of devices, systems, policies, or other methods of reducing water consumption and reducing the total flow of sewage. Such report shall include an estimate of the benefits to be derived from adoption and use of such devices, systems, policies, or other methods and also shall reflect estimates of any increase in private, public, or other cost that would be occasioned thereby.

(p) Agricultural pollution.

In carrying out the provisions of subsection (a) of this section the Administrator shall, in cooperation with the Secretary of Agriculture, other Federal agencies, and the States, carry out a comprehensive study and research program to determine new and improved methods and the better application of existing methods of preventing, reducing, and eliminating pollution from agriculture, including the legal, economic, and other implications of the use of such methods.

(q) Sewage in rural areas.

(1) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems.

(2) The Administrator shall conduct a comprehensive program of research and investigation and pilot project implementation into new and improved methods for the collection and treatment of sewage and other liquid wastes combined with the treatment and disposal of solid wastes.

(r) Research grants to colleges and universities.

The Administrator is authorized to make grants to colleges and universities to conduct basic research into the structure and function of fresh water aquatic ecosystems, and to improve understanding of the ecological characteristics necessary to the maintenance of the chemical, physical, and biological integrity of freshwater aquatic ecosystems.

(s) River Study Centers.

The Administrator is authorized to make grants to one or more institutions of higher education (regionally located and to be designated as "River Study Centers") for the purpose of conducting and reporting on interdisciplinary studies on the nature of river systems, including hydrology, biology, ecology, economics, the relationship between river uses and land uses, and the effects of development within river basins on river systems and on the value of water resources and water related activities. No such grant in any fiscal year shall exceed $1,000,000.

(t) Thermal discharges.

The Administrator shall, in cooperation with State and Federal agencies and public and private organizations, conduct continuing comprehensive studies of the effects and methods of control of thermal discharges. In evaluating alternative methods of control the studies shall consider (1) such data as are available on the latest available technology, economic feasibility including cost-effectiveness analysis, and (2) the total impact on the environment, considering not only water quality but also air quality, land use, and effective utilization and conservation of fresh water and other natural resources. Such studies shall consider methods of minimizing adverse effects and maximizing beneficial effects of thermal discharges. The results of these studies shall be reported by the Administrator as soon as practicable, but not later than 270 days after October 18, 1972, and shall be made available to the public and the States, and considered as they become available by the Administrator in carrying out section 1326 of this title and by the States in proposing thermal water quality standards.

(u) Authorization of appropriations.

There is authorized to be appropriated (1) $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, for carrying out the provisions of this section other than subsections (g) (1) and (2), (p), (r), and (t) of this section; (2) not to exceed $7,500,000 for fiscal years 1973, 1974, and 1975, for carrying out the provisions of subsection (g) (1) of this section; (3) not to exceed $2,500,000 for fiscal years 1973, 1974, and 1975, for carrying out the provisions of subsection (g) (2) of this section; (4) not to exceed $10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p) of this section; (5) not to exceed $15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r) of this section; and (6) not to exceed $10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t) of this section. (June 30, 1948, ch. 758, title I, § 104, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 819, and amended Dec. 28, 1973, Pub. L. 93-207, § 1(1), 87 Stat. 906; Jan. 2, 1975, Pub. L. 93-592, § 1, 88 Stat. 1924.)

AMENDMENTS

1975—Subsec. (u)(1). Pub. L. 93-592, § 1(a), substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974,".

Subsec. (u)(2). Pub. L. 93-592, § 1(b), substituted "fiscal years 1973, 1974, and 1975" for "fiscal years 1973 and 1974".

Subsec. (u)(3). Pub. L. 93-592, § 1(c), substituted "fiscal years 1973, 1974, and 1975" for "fiscal year 1973".

Subsec. (u)(4). Pub. L. 93-592, § 1(d), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(5). Pub. L. 93-592, § 1(e), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

Subsec. (u)(6). Pub. L. 93-592, § 1(f), substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

1973—Subsec. (u)(2). Pub. L. 93-207 substituted "fiscal years 1973 and 1974" for "fiscal year 1973".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1322, 1376 of this title.

§ 1255. Grants for research and development.

(a) Demonstration projects covering storm waters, advanced waste treatment and water purification methods, and joint treatment systems for municipal and industrial wastes.

The Administrator is authorized to conduct in the Environmental Protection Agency, and to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of—

(1) any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into any waters of pollutants from sewers which carry storm water or both storm water and pollutants; or

(2) any project which will demonstrate advanced waste treatment and water purification methods (including the temporary use of new or improved chemical additives which provide substantial immediate improvements to existing treatment processes), or new or improved methods of joint treatment systems for municipal and industrial wastes;

and to include in such grants such amounts as are necessary for the purpose of reports, plans, and specifications in connection therewith.

(b) Demonstration projects for advanced treatment and environmental enhancement techniques to control pollution in river basins.

The Administrator is authorized to make grants to any State or States or interstate agency to demonstrate, in river basins or portions thereof, advanced treatment and environmental enhancement techniques to control pollution from all sources, within

such basins or portions thereof, including nonpoint sources, together with in stream water quality improvement techniques.

(c) Research and demonstration projects for prevention of water pollution by industry.

In order to carry out the purposes of section 1311 of this title, the Administrator is authorized to (1) conduct in the Environmental Protection Agency, (2) make grants to persons, and (3) enter into contracts with persons, for research and demonstration projects for prevention of pollution of any waters by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants. No grant shall be made for any project under this subsection unless the Administrator determines that such project will develop or demonstrate a new or improved method of treating industrial wastes or otherwise prevent pollution by industry, which method shall have industrywide application.

(d) Accelerated and priority development of waste management and waste treatment methods and identification and measurement methods.

In carrying out the provisions of this section, the Administrator shall conduct, on a priority basis, an accelerated effort to develop, refine, and achieve practical application of:

(1) waste management methods applicable to point and nonpoint sources of pollutants to eliminate the discharge of pollutants, including, but not limited to, elimination of runoff of pollutants and the effects of pollutants from inplace or accumulated sources;

(2) advanced waste treatment methods applicable to point and nonpoint sources, including inplace or accumulated sources of pollutants, and methods for reclaiming and recycling water and confining pollutants so they will not migrate to cause water or other environmental pollution; and

(3) improved methods and procedures to identify and measure the effects of pollutants on the chemical, physical, and biological integrity of water, including those pollutants created by new technological developments.

(e) Research and demonstration projects covering agricultural pollution and pollution from sewage in rural areas; dissemination of information.

(1) The Administrator is authorized to (A) make, in consultation with the Secretary of Agriculture, grants to persons for research and demonstration projects with respect to new and improved methods of preventing, reducing, and eliminating pollution from agriculture, and (B) disseminate, in cooperation with the Secretary of Agriculture, such information obtained under this subsection, section 1254(p) of this title, and section 1314 of this title as will encourage and enable the adoption of such methods in the agricultural industry.

(2) The Administrator is authorized, (A) in consultation with other interested Federal agencies, to make grants for demonstration projects with respect to new and improved methods of preventing, reducing, storing, collecting, treating, or otherwise eliminating pollution from sewage in rural and other areas where collection of sewage in conventional, community-wide sewage collection systems is impractical, uneconomical, or otherwise infeasible, or where soil conditions or other factors preclude the use of septic tank and drainage field systems, and (B) in cooperation with other interested Federal and State agencies, to disseminate such information obtained under this subsection as will encourage and enable the adoption of new and improved methods developed pursuant to this subsection.

(f) Limitations.

Federal grants under subsection (a) of this section shall be subject to the following limitations:

(1) No grant shall be made for any project unless such project shall have been approved by the appropriate State water pollution control agency or agencies and by the Administrator;

(2) No grant shall be made for any project in an amount exceeding 75 per centum of cost thereof as determined by the Administrator; and

(3) No grant shall be made for any project unless the Administrator determines that such project will serve as a useful demonstration for the purpose set forth in clause (1) or (2) of subsection (a) of this section.

(g) Maximum grants.

Federal grants under subsections (c) and (d) of this section shall not exceed 75 per centum of the cost of the project.

(h) Authorization of appropriations.

For the purpose of this section there is authorized to be appropriated $75,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and from such appropriations at least 10 per centum of the funds actually appropriated in each fiscal year shall be available only for the purposes of subsection (e) of this section. (June 30, 1948, ch. 758, title I, § 105, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 825, and amended June 2, 1975, Pub. L. 93–592, § 2, 88 Stat. 1925.)

AMENDMENTS

1975—Subsec. (h). Pub. L. 93–592 substituted "the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975," for "and the fiscal year ending June 30, 1974,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1256. Grants for pollution control programs.

(a) Authorization of appropriations for state and interstate programs.

There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purpose of this section—

(1) $60,000,000 for the fiscal year ending June 30, 1973; and

(2) $75,000,000 for the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

(b) Allotments.

From the sums appropriated in any fiscal year, the Administrator shall make allotments to the several

States and interstate agencies in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in the respective States.

(c) Maximum annual payments.

The Administrator is authorized to pay to each State and interstate agency each fiscal year either—

(1) the allotment of such State or agency for such fiscal year under subsection (b) of this section, or

(2) the reasonable costs as determined by the Administrator of developing and carrying out a pollution program by such State or agency during such fiscal year,

which ever amount is the lesser.

(d) Limitations.

No grant shall be made under this section to any State or interstate agency for any fiscal year when the expenditure of non-Federal funds by such State or interstate agency during such fiscal year for the recurrent expenses of carrying out its pollution control program are less than the expenditure by such State or interstate agency of non-Federal funds for such recurrent program expenses during the fiscal year ending June 30, 1971.

(e) Grants prohibited to states not establishing water quality monitoring procedures or adequate emergency and contingency plans.

Beginning in fiscal year 1974 the Administrator shall not make any grant under this section to any State which has not provided or is not carrying out as a part of its program—

(1) the establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, and to compile and analyze data on (including classification according to eutrophic condition), the quality of navigable waters and to the extent practicable, ground waters including biological monitoring; and provision for annually updating such data and including it in the report required under section 1315 of this title;

(2) authority comparable to that in section 1364 of this title and adequate contingency plans to implement such authority.

(f) Conditions.

Grants shall be made under this section on condition that—

(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after October 18, 1972:

(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

(B) such additional information, data, and reports as the Administrator may require.

(2) No federally assumed enforcement as defined in section 1319(a)(2) of this title is in effect with respect to such State or interstate agency.

(3) Such State (or interstate agency) submits within one hundred and twenty days after October 18, 1972, and before July 1 of each year thereafter for the Administrator's approval its program for the prevention, reduction, and elimination of pollution in accordance with purposes and provisions of this chapter in such form and content as the Administrator may prescribe.

(g) Reallotment of unpaid allotments.

Any sums allotted under subsection (b) of this section in any fiscal year which are not paid shall be reallotted by the Administrator in accordance with regulations promulgated by him. (June 30, 1948, ch. 758, title I, § 106, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 827, and amended Jan. 2, 1975, Pub. L. 93-592, § 3, 88 Stat. 1925.)

AMENDMENTS

1975—Subsec. (a)(2). Pub. L. 93-592 substituted "June 30, 1974, and the fiscal year ending June 30, 1975;" for "June 30, 1974;".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1257. Mine water pollution control demonstrations.

(a) Comprehensive approaches to elimination or control of mine water pollution.

The Administrator in cooperation with the Appalachian Regional Commission and other Federal agencies is authorized to conduct, to make grants for, or to contract for, projects to demonstrate comprehensive approaches to the elimination or control of acid or other mine water pollution resulting from active or abandoned mining operations and other environmental pollution affecting water quality within all or part of a watershed or river basin, including siltation from surface mining. Such projects shall demonstrate the engineering and economic feasibility and practicality of various abatement techniques which will contribute substantially to effective and practical methods of acid or other mine water pollution elimination or control, and other pollution affecting water quality, including techniques that demonstrate the engineering and economic feasibility and practicality of using sewage sludge materials and other municipal wastes to diminish or prevent pollution affecting water quality from acid, sedimentation, or other pollutants and in such projects to restore affected lands to usefulness for forestry, agriculture, recreation, or other beneficial purposes.

(b) Consistency of projects with objectives of Appalachian Regional Development Act of 1965.

Prior to undertaking any demonstration project under this section in the Appalachian region (as defined in section 403 of the Appalachian Regional Development Act of 1965, as amended), the Appalachian Regional Commission shall determine that such demonstration project is consistent with the objectives of the Appalachian Regional Development Act of 1965, as amended.

(c) Watershed selection.

The Administrator, in selecting watersheds for the purposes of this section, shall be satisfied that the project area will not be affected adversely by the influx of acid or other mine water pollution from nearby sources.

(d) Conditions upon Federal participation.

Federal participation in such projects shall be subject to the conditions—

(1) that the State shall acquire any land or interests therein necessary for such project; and

(2) that the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

(e) Authorization of appropriations.

There is authorized to be appropriated $30,000,000 to carry out the provisions of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 107, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 828.)

REFERENCES IN TEXT

The Appalachian Regional Development Act, referred to in subsec. (b), is Pub. L. 89–4, Mar. 9, 1965, 79 Stat. 5, as amended, which is set out in the Appendix to Title 40, Public Buildings, Property, and Works.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1258. Pollution control in the Great Lakes.

(a) Demonstration projects.

The Administrator, in cooperation with other Federal departments, agencies, and instrumentalities is authorized to enter into agreements with any State, political subdivision, interstate agency, or other public agency, or combination thereof, to carry out one or more projects to demonstrate new methods and techniques and to develop preliminary plans for the elimination or control of pollution, within all or any part of the watersheds of the Great Lakes. Such projects shall demonstrate the engineering and economic feasibility and practicality of removal of pollutants and prevention of any polluting matter from entering into the Great Lakes in the future and other reduction and remedial techniques which will contribute substantially to effective and practical methods of pollution prevention, reduction, or elimination.

(b) Conditions of Federal participation.

Federal participation in such projects shall be subject to the condition that the State, political subdivision, interstate agency, or other public agency, or combination thereof, shall pay not less than 25 per centum of the actual project costs, which payment may be in any form, including, but not limited to, land or interests therein that is needed for the project, and personal property or services the value of which shall be determined by the Administrator.

(c) Authorization of appropriations.

There is authorized to be appropriated $20,000,000 to carry out the provisions of subsections (a) and (b) of this section, which sum shall be available until expended.

(d) Lake Erie demonstration program.

(1) In recognition of the serious conditions which exist in Lake Erie, the Secretary of the Army, acting through the Chief of Engineers, is directed to design and develop a demonstration waste water management program for the rehabilitation and environmental repair of Lake Erie. Prior to the initiation of detailed engineering and design, the program, along with the specific recommendations of the Chief of Engineers, and recommendations for its financing, shall be submitted to the Congress for statutory approval. This authority is in addition to, and not in lieu of, other waste water studies aimed at eliminating pollution emanating from select sources around Lake Erie.

(2) This program is to be developed in cooperation with the Environmental Protection Agency, other interested departments, agencies, and instrumentalities of the Federal Government, and the States and their political subdivisions. This program shall set forth alternative systems for managing waste water on a regional basis and shall provide local and State governments with a range of choice as to the type of system to be used for the treatment of waste water. These alternative systems shall include both advanced waste treatment technology and land disposal systems including aerated treatment-spray irrigation technology and will also include provisions for the disposal of solid wastes, including sludge. Such program should include measures to control point sources of pollution, area sources of pollution, including acid-mine drainage, urban runoff and rural runoff, and in place sources of pollution, including bottom loads, sludge banks, and polluted harbor dredgings.

(e) Authorization of appropriations for Lake Erie demonstration program.

There is authorized to be appropriated $5,000,000 to carry out the provisions of subsection (d) of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 108, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 828.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1259. Training grants and contracts.

(a) The Administrator is authorized to make grants to or contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the preparation of undergraduate students to enter an occupation which involves the design, operation, and maintenance of treatment works, and other facilities whose purpose is water quality control. Such grants or contracts may include payment of all or part of the cost of programs or projects such as—

(A) planning for the development or expansion of programs or projects for training persons in the operation and maintenance of treatment works;

(B) training and retraining of faculty members;

(C) conduct of short-term or regular session institutes for study by persons engaged in, or preparing to engage in, the preparation of students preparing to enter an occupation involving the operation and maintenance of treatment works;

(D) carrying out innovative and experimental programs of cooperative education involving alternate periods of full-time or part-time academic study at the institution and periods of full-time or part-time employment involving the operation and maintenance of treatment works; and

(E) research into, and development of, methods of training students or faculty, including the preparation of teaching materials and the planning of curriculum.

(b) (1) The Administrator may pay 100 per centum of any additional cost of construction of a treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel.

(2) The Administrator shall make no more than one grant for such additional construction in any State (to serve a group of States, where, in his judgment, efficient training programs require multi-State programs), and shall make such grant after consultation with and approval by the State or States on the basis of (A) the suitability of such facility for training operation and maintenance personnel for treatment works throughout such State or States; and (B) a commitment by the State agency or agencies to carry out at such facility a program of training approved by the Administrator.

(3) The Administrator may make such grant out of the sums allocated to a State under section 1285 of this title, except that in no event shall the Federal cost of any such training facilities exceed $250,000. (June 30, 1948, ch. 758, title I, § 109, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 829.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262 and 1375 of this title.

§ 1260. Same; applications; allocation.

(1) A grant or contract authorized by section 1259 of this title may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it—

(A) sets forth programs, activities, research, or development for which a grant is authorized under section 1259 of this title and describes the relation to any program set forth by the applicant in an application, if any, submitted pursuant to section 1261 of this title;

(B) provides such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section; and

(C) provides for making such reports, in such form and containing such information, as the Administrator may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Administrator may find necessary to assure the correctness and verification of such reports.

(2) The Administrator shall allocate grants or contracts under section 1259 of this title in such manner as will most nearly provide an equitable distribution of the grants or contracts throughout the United States among institutions of higher education which show promise of being able to use funds effectively for the purpose of this section.

(3) (A) Payments under this section may be used in accordance with regulations of the Administrator, and subject to the terms and conditions set forth in an application approved under paragraph (1), to pay part of the compensation of students employed in connection with the operation and maintenance of treatment works, other than as an employee in connection with the operation and maintenance of treatment works or as an employee in any branch of the Government of the United States, as part of a program for which a grant has been approved pursuant to this section.

(B) Departments and agencies of the United States are encouraged, to the extent consistent with efficient administration, to enter into arrangements with institutions of higher education for the full-time, part-time, or temporary employment, whether in the competitive or excepted service, of students enrolled in programs set forth in applications approved under paragraph (1). (June 30, 1948, ch. 758, title I, § 110, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 830.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1261, 1262, 1375 of this title.

§ 1261. Scholarships.

(1) The Administrator is authorized to award scholarships in accordance with the provisions of this section for undergraduate study by persons who plan to enter ar occupation involving the operation and maintenance of treatment works. Such scholarships shall be awarded for such periods as the Administrator may determine but not to exceed four academic years.

(2) The Administrator shall allocate scholarships under this section among institutions of higher education with programs approved under the provisions of this section for the use of individuals accepted into such programs in such manner and according to such plan as will insofar as practicable—

(A) provide an equitable distribution of such scholarships throughout the United States; and

(B) attract recent graduates of secondary schools to enter an occupation involving the operation and maintenance of treatment works.

(3) The Administrator shall approve a program of any institution of higher education for the purposes of this section only upon application by the institution and only upon his finding—

(A) that such program has a principal objective the education and training of persons in the operation and maintenance of treatment works;

(B) that such program is in effect and of high quality, or can be readily put into effect and may reasonably be expected to be of high quality;

(C) that the application describes the relation of such program to any program, activity, research, or development set forth by the applicant in an application, if any, submitted pursuant to section 1260 of this title; and

(D) that the application contains satisfactory assurances that (i) the institution will recommend to the Administrator for the award of scholarships under this section, for study in such program, only persons who have demonstrated to the satisfaction of the institution a serious intent, upon completing the program, to enter an occupation involving the operation and maintenance of treatment works, and (ii) the institution will make reasonable continuing efforts to encourage recipients of scholarships under this section, enrolled in such program, to enter occupations

involving the operation and maintenance of treatment works upon completing the program.

(4)(A) The Administrator shall pay to persons awarded scholarships under this section such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable supported programs.

(B) The Administrator shall (in addition to the stipends paid to persons under paragraph (1)) pay to the institution of higher education at which such person is pursuing his course of study such amount as he may determine to be consistent with prevailing practices under comparable federally supported programs.

(5) A person awarded a scholarship under the provisions of this section shall continue to receive the payments provided in this section only during such periods as the Administrator finds that he is maintaining satisfactory proficiency and devoting full time to study or research in the field in which such scholarship was awarded in an institution of higher education, and is not engaging in gainful employment other than employment approved by the Administrator by or pursuant to regulation.

(6) The Administrator shall by regulation provide that any person awarded a scholarship under this section shall agree in writing to enter and remain in an occupation involving the design, operation, or maintenance of treatment works for such period after completion of his course of studies as the Administrator determines appropriate. (June 30, 1948, ch. 758, title I, § 111, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 831.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1260, 1262, 1375 of this title.

§ 1262. Definitions and authorizations.

(a) As used in sections 1259 through 1262 of this title—

(1) The term "institution of higher education" means an educational institution described in the first sentence of section 1141 of Title 20 (other than an institution of any agency of the United States) which is accredited by a nationally recognized accrediting agency or association approved by the Administrator for this purpose. For purposes of this subsection, the Administrator shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of training offered.

(2) The term "academic year" means an academic year or its equivalent, as determined by the Administor.

(b) The Administrator shall annually report his activities under sections 1259 through 1262 of this title, including recommendations for needed revisions in the provisions thereof.

(c) There are authorized to be appropriated $25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, to carry out sections 1259 through 1262 of this title. (June 30, 1948, ch. 758, title I, § 112, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 832, and amended Jan. 2, 1975, Pub. L. 93–592, § 4, 88 Stat. 1925.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 93–592 substituted "June 30, 1974, and June 30, 1975," for "and June 30, 1974,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1263. Alaska village demonstration projects.

(a) The Administrator is authorized to enter into agreements with the State of Alaska to carry out one or more projects to demonstrate methods to provide for central community facilities for safe water and eliminate or control of pollution in those native villages of Alaska without such facilities. Such project shall include provisions for community safe water supply systems, toilets, bathing and laundry facilities, sewage disposal facilities, and other similar facilities, and educational and informational facilities and programs relating to health and hygiene. Such demonstration projects shall be for the further purpose of developing preliminary plans for providing such safe water and such elimination or control of pollution for all native villages in such State.

(b) In carrying out this section the Administrator shall cooperate with the Secretary of Health, Education, and Welfare for the purpose of utilizing such of the personnel and facilities of that Department as may be appropriate.

(c) The Administrator shall report to Congress not later than July 1, 1973, the results of the demonstration projects authorized by this section together with his recommendations, including any necessary legislation, relating to the establishment of a statewide program.

(d) There is authorized to be appropriated not to exceed $2,000,000 to carry out this section. (June 30, 1948, ch. 758, title I, § 113, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 832.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1264. Lake Tahoe study.

(a) The Administrator, in consultation with the Tahoe Regional Planning Agency, the Secretary of Agriculture, other Federal agencies, representatives of State and local governments, and members of the public, shall conduct a thorough and complete study on the adequacy of and need for extending Federal oversight and control in order to preserve the fragile ecology of Lake Tahoe.

(b) Such study shall include an examination of the interrelationships and responsibilities of the various agencies of the Federal Government and State and local governments with a view to establishing the necessity for redefinition of legal and other arrangements between these various governments, and making specific legislative recommendations to Congress. Such study shall consider the effect of various actions in terms of their environmental impact on the Tahoe Basin, treated as an ecosystem.

(c) The Administrator shall report on such study to Congress not later than one year after October 18, 1972.

(d) There is authorized to be appropriated to carry out this section not to exceed $500,000. (June 30, 1948, ch. 758, title I, § 114, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1265. In-place toxic pollutants.

The Administrator is directed to identify the location of in-place pollutants with emphasis on toxic pollutants in harbors and navigable waterways and is authorized, acting through the Secretary of the Army, to make contracts for the removal and appropriate disposal of such materials from critical port and harbor areas. There is authorized to be appropriated $15,000,000 to carry out the provisions of this section, which sum shall be available until expended. (June 30, 1948, ch. 758, title I, § 115, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

SUBCHAPTER II.—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1371 of this title; title 42 section 5153.

§ 1281. Congressional declaration of purposes.

(a) It is the purpose of this subchapter to require and to assist the development and implementation of waste treatment management plans and practices which will achieve the goals of this chapter.

(b) Waste treatment management plans and practices shall provide for the application of the best practicable waste treatment technology before any discharge into receiving waters, including reclaiming and recycling of water, and confined disposal of pollutants so they will not migrate to cause water or other environmental pollution and shall provide for consideration of advanced waste treatment techniques.

(c) To the extent practicable, waste treatment management shall be on an areawide basis and provide control or treatment of all point and nonpoint sources of pollution, including in place or accumulated pollution sources.

(d) The Administrator shall encourage waste treatment management which results in the construction of revenue producing facilities providing for—

(1) the recycling of potential sewage pollutants through the production of agriculture, silviculture, or aquaculture products, or any combination thereof;

(2) the confined and contained disposal of pollutants not recycled;

(3) the reclamation of wastewater; and

(4) the ultimate disposal of sludge in a manner that will not result in environmental hazards.

(e) The Administrator shall encourage waste treatment management which results in integrating facilities for sewage treatment and recycling with facilities to treat, dispose of, or utilize other industrial and municipal wastes, including but not limited to solid waste and waste heat and thermal discharges. Such integrated facilities shall be designed and operated to produce revenues in excess of capital and operation and maintenance costs and such revenues shall be used by the designated regional management agency to aid in financing other environmental improvement programs.

(f) The Administrator shall encourage waste treatment management which combines "open space" and recreational considerations with such management.

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works.

(2) The Administrator shall not make grants from funds authorized for any fiscal year beginning after June 30, 1974, to any State, municipality, or intermunicipal or interstate agency for the erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works unless the grant applicant has satisfactorily demonstrated to the Administrator that—

(A) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works consistent with the purposes of this subchapter; and

(B) as appropriate, the works proposed for grant assistance will take into account and allow to the extent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(3) The Administrator shall not approve any grant after July 1, 1973, for treatment works under this section unless the applicant shows to the satisfaction of the Administrator that each sewer collection system discharging into such treatment works is not subject to excessive infiltration.

(4) The Administrator is authorized to make grants to applicants for treatment works grants under this section for such sewer system evaluation studies as may be necessary to carry out the requirements of paragraph (3) of this subsection. Such grants shall be made in accordance with rules and regulations promulgated by the Administrator. Initial rules and regulations shall be promulgated under this paragraph not later than 120 days after October 18, 1972. (June 30, 1948, ch. 758, title II, § 201, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 833.)

ENVIRONMENTAL FINANCING AUTHORITY

Section 12 of Pub. L. 92–500 provided that:

"(a) [Short Title] This section may be cited as the Environmental Financing Act of 1972.

"(b) [Establishment] There is hereby created a body corporate to be known as the Environmental Financing Authority, which shall have succession until dissolved

by Act of Congress. The Authority shall be subject to the general supervision and direction of the Secretary of the Treasury. The Authority shall be an instrumentality of the United States Government and shall maintain such offices as may be necessary or appropriate in the conduct of its business.

"(c) [Congressional Declaration of Purpose] The purpose of this section is to assure that inability to borrow necessary funds on reasonable terms does not prevent any State or local public body from carrying out any project for construction of waste treatment works determined eligible for assistance pursuant to subsection (e) of this section.

"(d) [Board of Directors] (1) The Authority shall have a Board of Directors consisting of five persons, one of whom shall be the Secretary of the Treasury or his designee as Chairman of the Board, and four of whom shall be appointed by the President from among the officers or employees of the Authority or of any department or agency of the United States Government.

"(2) The Board of Directors shall meet at the call of its Chairman. The Board shall determine the general policies which shall govern the operations of the Authority. The Chairman of the Board shall select and effect the appointment of qualified persons to fill the offices as may be provided for in the bylaws, with such executive functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the executive officers of the Authority and shall discharge all such executive functions, powers, and duties. The members of the Board, as such, shall not receive compensation for their services.

"(e) [Purchase of State and Local Obligations] (1) Until July 1, 1975, the Authority is authorized to make commitments to purchase, and to purchase on terms and conditions determined by the Authority, any obligation or participation therein which is issued by a State or local public body to finance the non-Federal share of the cost of any project for the construction of waste treatment works which the Administrator of the Environmental Protection Agency has determined to be eligible for Federal financial assistance under the Federal Water Pollution Control Act [this chapter].

"(2) No commitment shall be entered into, and no purchase shall be made, unless the Administrator of the Environmental Protection Agency (A) has certified that the public body is unable to obtain on reasonable terms sufficient credit to finance its actual needs; (B) has approved the project as eligible under the Federal Water Pollution Control Act [this chapter], and (C) has agreed to guarantee timely payment of principal and interest on the obligation. The Administrator is authorized to guarantee such timely payments and to issue regulations as he deems necessary and proper to protect such guarantees. Appropriations are hereby authorized to be made to the Administrator in such sums as are necessary to make payments under such guarantees, and such payments are authorized to be made from such appropriations.

"(3) No purchase shall be made of obligations issued to finance projects, the permanent financing of which occurred prior to the enactment of this section [Oct. 18, 1972].

"(4) Any purchase by the Authority shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary of the Treasury taking into consideration (A) the current average yield on outstanding marketable obligations of the United States of comparable maturity or in its stead whenever the Authority has sufficient of its own long-term obligations outstanding, the current average yield on outstanding obligations of the Authority of comparable maturity; and (B) the market yields on municipal bonds.

"(5) The Authority is authorized to charge fees for its commitments and other services adequate to cover all expenses and to provide for the accumulation of reasonable contingency reserves and such fees shall be included in the aggregate project costs.

"(f) [Initial Capital] To provide initial capital to the Authority the Secretary of the Treasury is authorized to advance the funds necessary for this purpose. Each such advance shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. Interest payments on such advances may be deferred, at the discretion of the Secretary, but any such deferred payments shall themselves bear interest at the rate specified in this section. There is authorized to be appropriated not to exceed $100,000,000, which shall be available for the purposes of this subsection.

"(g) [Issuance of Obligations] (1) The Authority is authorized, with the approval of the Secretary of the Treasury, to issue and have outstanding obligations having such maturities and bearing such rate or rates of interest as may be determined by the Authority. Such obligations may be redeemable at the option of the Authority before maturity in such manner as may be stipulated therein.

"(2) As authorized in appropriation Acts, and such authorizations may be without fiscal year limitations, the Secretary of the Treasury may in his discretion purchase or agree to purchase any obligations issued pursuant to paragraph (1) of this subsection, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act [section 752 et seq. of Title 31], as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act [section 752 et seq. of Title 31], as now or hereafter in force, are extended to include such purchases. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary of the Treasury, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury may sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this paragraph. All purchases and sales by the Secretary of the Treasury of such obligations under this paragraph shall be treated as public debt transactions of the United States.

"(h) [Interest Differential] The Secretary of the Treasury is authorized and directed to make annual payments to the Authority in such amounts as are necessary to equal the amount by which the dollar amount of interest expense accrued by the Authority on account of its obligations exceeds the dollar amount of interest income accrued by the Authority on account of obligations purchased by it pursuant to subsection (e) of this section.

"(i) [Powers] The Authority shall have power—

"(1) to sue and be sued, complain and defend, in its corporate name;

"(2) to adopt, alter, and use a corporate seal, which shall be judicially noticed;

"(3) to adopt, amend, and repeal bylaws, rules, and regulations as may be necessary for the conduct of its business;

"(4) to conduct its business, carry on its operations, and have offices and exercise the powers granted by this section in any State without regard to any qualification or similar statute in any State;

"(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated;

"(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Authority;

"(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

"(8) to appoint such officers, attorneys, employees, and agents as may be required, to define their duties, to fix and to pay such compensation for their services as may be determined, subject to the civil service and classification laws, to require bonds for them and pay the premium thereof; and

"(9) to enter into contracts, to execute instruments, to incur liabilities, and to do all things as are necessary

or incidental to the proper management of its affairs and the proper conduct of its business.

"(j) [Tax Exemption, Exemptions] The Authority, its property, its franchise, capital, reserves, surplus, security holdings, and other funds, and its income shall be exempt from all taxation now or hereafter imposed by the United States or by any State or local taxing authority; except that (A) any real property and any tangible personal property of the Authority shall be subject to Federal, State, and local taxation to the same extent according to its value as other such property is taxed, and (B) any and all obligations issued by the Authority shall be subject both as to principal and interest to Federal, State, and local taxation to the same extent as the obligations of private corporations are taxed.

"(k) [Nature of Obligations] All obligations issued by the Authority shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All obligations issued by the Authority pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are issued by the United States.

"(l) [Preparation of Obligations by Secretary of the Treasury] In order to furnish obligations for delivery by the Authority, the Secretary of the Treasury is authorized to prepare such obligations in such form as the Authority may approve, such obligations when prepared to be held in the Treasury subject to delivery upon order by the Authority. The engraved plates, dies, bed pieces, and so forth, executed in connection therewith, shall remain in the custody of the Secretary of the Treasury. The Authority shall reimburse the Secretary of the Treasury for any expenditures made in the preparation, custody, and delivery of such obligations.

"(m) [Annual Report to Congress] The Authority shall, as soon as practicable after the end of each fiscal year, transmit to the President and the Congress an annual report of its operations and activities.

"(n) [Subsec. (n) amended section 24 of Title 12, Banks and Banking, and is not set out herein.]

"(o) [Financial Controls] The budget and audit provisions of the Government Corporation Control Act (31 U.S.C. 846) shall be applicable to the Environmental Financing Authority in the same manner as they are applied to the wholly owned Government corporations.

"(p) [Subsec. (p) amended section 711 of Title 31, Money and Finance, and is not set out herein.]"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1283, 1284, 1288, 1291, 1292, 1311, 1314, 1371, 1375 of this title.

§ 1282. Federal share.

(a) The amount of any grant for treatment works made under this chapter from funds authorized for any fiscal year beginning after June 30, 1971, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator). Any grant (other than for reimbursement) made prior to October 18, 1972, from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this section.

(b) The amount of the grant for any project approved by the Administrator after January 1, 1971, and before July 1, 1971, for the construction of treatment works, the actual erection, building or acquisition of which was not commenced prior to July 1, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under subsection (a) of this section for grants for treatment works from funds for fiscal years beginning after June 30, 1971, with respect to the cost of such actual erection, building, or acquisition. Such increased amount shall be paid from any funds allocated to the State in which the treatment works is located without regard to the fiscal year for which such funds were authorized. Such increased amount shall be paid for such project only if—

(1) a sewage collection system that is a part of the same total waste treatment system as the treatment works for which such grant was approved is under construction or is to be constructed for use in conjunction with such treatment works, and if the cost of such sewage collection system exceeds the cost of such treatment works, and

(2) the State water pollution control agency or other appropriate State authority certifies that the quantity of available ground water will be insufficient, inadequate, or unsuitable for public use, including the ecological preservation and recreational use of surface water bodies, unless effluents from publicly-owned treatment works after adequate treatment are returned to the ground water consistent with acceptable technological standards.

(June 30, 1948, ch. 758, title II, § 202, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 834.)

§ 1283. Plans, specifications, estimates, and payments.

(a) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposed project for the construction of treatment works for which a grant is applied for under section 1281(g)(1) of this title from funds allotted to the State under section 1285 of this title and which otherwise meets the requirements of this chapter. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(b) The Administrator shall, from time to time as the work progresses, make payments to the recipient of a grant for costs of construction incurred on a project. These payments shall at no time exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project.

(c) After completion of a project and approval of the final voucher by the Administrator, he shall pay out of the appropriate sums the unpaid balance of the Federal share payable on account of such project.

(d) Nothing in this chapter shall be construed to require, or to authorize the Administrator to require, that grants under this chapter for construction of treatment works be made only for projects which are operable units usable for sewage collection, transportation, storage, waste treatment, or for similar purposes without additional construction. (June 30, 1948, ch. 758, title II, § 203, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 835, and amended Jan. 2, 1974, Pub. L. 93–243, § 2, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1285, 1286, 1311 of this title.

§ 1284. Limitations and conditions.

(a) Before approving grants for any project for any treatment works under section 1281(g)(1) of this title the Administrator shall determine—

(1) that such works are included in any applicable areawide waste treatment management plan developed under section 1288 of this title;

(2) that such works are in conformity with any applicable State plan under section 1313(e) of this title;

(3) that such works have been certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 1313(e) of this title;

(4) that the applicant proposing to construct such works agrees to pay the non-Federal costs of such works and has made adequate provisions satisfactory to the Administrator for assuring proper and efficient operation, including the employment of trained management and operations personnel, and the maintenance of such works in accordance with a plan of operation approved by the State water pollution control agency or, as appropriate, the interstate agency, after construction thereof;

(5) that the size and capacity of such works relate directly to the needs to be served by such works, including sufficient reserve capacity. The amount of reserve capacity provided shall be approved by the Administrator on the basis of a comparison of the cost of constructing such reserves as a part of the works to be funded and the anticipated cost of providing expanded capacity at a date when such capacity will be required;

(6) that no specification for bids in connection with such works shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal".

(b)(1) Notwithstanding any other provision of this subchapter, the Administrator shall not approve any grant for any treatment works under section 1281(g)(1) of this title after March 1, 1973, unless he shall first have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the Administrator) which is allocable to the treatment of such industrial wastes to the extent attributable to the Federal share of the cost of construction; and (C) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator.

(2) The Administrator shall, within one hundred and eighty days after October 18, 1972, and after consultation with appropriate State, interstate, municipal, and intermunicipal agencies, issue guidelines applicable to payment of waste treatment costs by industrial and nonindustrial recipients of waste treatment services which shall establish (A) classes of users of such services, including categories of industrial users; (B) criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste; and (C) model systems and rates of user charges typical of various treatment works serving municipal-industrial communities.

(3) The grantee shall retain an amount of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the Federal share of eligible project costs provided pursuant to this subchapter as determined by the Administrator, equal to (A) the amount of the non-Federal cost of such project paid by the grantee plus (B) the amount, determined in accordance with regulations promulgated by the Administrator, necessary for future expansion and reconstruction of the project, except that such retained amount shall not exceed 50 per centum of such revenues from such project. All revenues from such project not retained by the grantee shall be deposited by the Administrator in the Treasury as miscellaneous receipts. That portion of the revenues retained by the grantee attributable to clause (B) of the first sentence of this paragraph, together with any interest thereon shall be used solely for the purposes of future expansion and reconstruction of the project.

(4) Approval by the Administrator of a grant to an interstate agency established by interstate compact for any treatment works shall satisfy any other requirement that such works be authorized by Act of Congress. (June 30, 1948, ch. 758, title II, § 204, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 835.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title.

§ 1285. Allotment of grant funds.

(a) Sums authorized to be appropriated pursuant to section 1287 of this title for each fiscal year beginning after June 30, 1972, shall be allotted by the Administrator not later than the January 1st immediately preceding the beginning of the fiscal year for which authorized, except that the allotment

for fiscal year 1973 shall be made not later than 30 days after October 18, 1972. Such sums shall be allotted among the States by the Administrator in accordance with regulations promulgated by him, in the ratio that the estimated cost of constructing all needed publicly owned treatment works in each State bears to the estimated cost of construction of all needed publicly owned treatment works in all of the States. For the fiscal years ending June 30, 1973, and June 30, 1974, such ratio shall be determined on the basis of table III of House Public Works Committee Print No. 92–50. For the fiscal year ending June 30, 1975, such ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print. Allotments for fiscal years which begin after the fiscal year ending June 30, 1975, shall be made only in accordance with a revised cost estimate made and submitted to Congress in accordance with section 1375(b) of this title and only after such revised cost estimate shall have been approved by law specifically enacted after October 18, 1972.

(b) (1) Any sums allotted to a State under subsection (a) of this section shall be available for obligation under section 1283 of this title on and after the date of such allotment. Such sums shall continue available for obligation in such State for a period of one year after the close of the fiscal year for which such sums are authorized. Any amounts so allotted which are not obligated by the end of such one-year period shall be immediately reallotted by the Administrator, in accordance with regulations promulgated by him, generally on the basis of the ratio used in making the last allotment of sums under this section. Such reallotted sums shall be added to the last allotments made to the States. Any sum made available to a State by reallotment under this subsection shall be in addition to any funds otherwise allotted to such State for grants under this subchapter during any fiscal year.

(2) Any sums which have been obligated under section 1283 of this title and which are released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. (June 30, 1948, ch. 758, title II, § 205, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 837, and amended Jan. 2, 1974, Pub. L. 93–243, § 1, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–243 added provisions that for the fiscal year ending June 30, 1975, the ratio shall be determined one-half on the basis of table I of House Public Works Committee Print Numbered 93–28 and one-half on the basis of table II of such print, except that no State shall receive an allotment less than that which it received for the fiscal year ending June 30, 1972, as set forth in table III of such print and substituted "June 30, 1975" for "June 30, 1974" in the sentence beginning "Allotments for fiscal years".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1259, 1283 of this title.

§ 1286. Reimbursement and advanced construction.

(a) Publicly owned treatment works construction initiated after June 30, 1966, but before July 1, 1972; reimbursement formula.

Any publicly owned treatment works in a State on which construction was initiated after June 30, 1966, but before July 1, 1972, which was approved by the appropriate State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act in effect at the time of the initiation of construction shall be reimbursed a total amount equal to the difference between the amount of Federal financial assistance, if any, received under such section 8 for such project and 50 per centum of the cost of such project, or 55 per centum of the project cost where the Administrator also determines that such treatment works was constructed in conformity with a comprehensive metropolitan treatment plan as described in section 8(f) of the Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Nothing in this subsection shall result in any such works receiving Federal grants from all sources in excess of 80 per centum of the cost of such project.

(b) Publicly owned treatment works construction initiated between June 30, 1956, and June 30, 1966; reimbursement formula.

Any publicly owned treatment works constructed with or eligible for Federal financial assistance under this Act in a State between June 30, 1956, and June 30, 1966, which was approved by the State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 but which was constructed without assistance under such section 8 or which received such assistance in an amount less than 30 per centum of the cost of such project shall qualify for payments and reimbursement of State or local funds used for such project from sums allocated to such State under this section in an amount which shall not exceed the difference between the amount of such assistance, if any, received for such project and 30 per centum of the cost of such project.

(c) Application for reimbursement.

No publicly owned treatment works shall receive any payment or reimbursement under subsection (a) or (b) of this section unless an application for such assistance is filed with the Administrator within the one year period which begins on October 18, 1972. Any application filed within such one year period may be revised from time to time, as may be necessary.

(d) Allocation of funds.

The Administrator shall allocate to each qualified project under subsection (a) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the

reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation. The Administrator shall allocate to each qualified project under subsection (b) of this section each fiscal year for which funds are appropriated under subsection (e) of this section an amount which bears the same ratio to the unpaid balance of the reimbursement due such project as the total of such funds for such year bears to the total unpaid balance of reimbursement due all such approved projects on the date of enactment of such appropriation.

(e) Authorization of appropriations.

There is authorized to be appropriated to carry out subsection (a) of this section not to exceed $2,600,000,000 and, to carry out subsection (b) of this section, not to exceed $750,000,000. The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section.

(f) Additional funds.

(1) In any case where all funds allotted to a State under this subchapter have been obligated under section 1283 of this title, and there is construction of any treatment works project without the aid of Federal funds and in accordance with all procedures and all requirements applicable to treatment works projects, except those procedures and requirements which limit construction of projects to those constructed with the aid of previously allotted Federal funds, the Administrator, upon his approval of an application made under this subsection therefor, is authorized to pay the Federal share of the cost of construction of such project when additional funds are allotted to the State under this subchapter if prior to the construction of the project the Administrator approves plans, specifications, and estimates therefor in the same manner as other treatment works projects. The Administrator may not approve an application under this subsection unless an authorization is in effect for the future fiscal year for which the application requests payment, which authorization will insure such payment without exceeding the State's expected allotment from such authorization.

(2) In determining the allotment for any fiscal year under this subchapter, any treatment works project constructed in accordance with this section and without the aid of Federal funds shall not be considered completed until an application under the provisions of this subsection with respect to such project has been approved by the Administrator, or the availability of funds from which this project is eligible for reimbursement has expired, whichever first occurs. (June 30, 1948, ch. 758, title II, § 206, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 836, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(2), 87 Stat. 906.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act Amendments of 1972, referred to in text, is Pub. L. 92–500, which fundamentally amended, reorganized, and expanded the Federal Water Pollution Control Act. The Federal Water Pollution Control Act, or "this Act", as thus amended, is now set out in this chapter. Section 8 of the Federal Water Pollution Control Act, as such section was in effect prior to the enactment of the Federal Water Pollution Control Act Amendments of 1972, was classified to section 1158 of this title and covered provisions now generally covered by this subchapter. See Codification note under section 1251 of this title.

AMENDMENTS

1973—Subsec. (e). Pub. L. 93–207 substituted "$2,600,000,000" for "$2,000,000,000".

APPLICATION FOR ASSISTANCE

Section 2 of Pub. L. 93–207 provided that: "Notwithstanding the requirements of subsection (c) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) [this section], applications for assistance under section 206 [this section], may be filed with the Administrator of the Environmental Protection Agency until January 31, 1974."

ALLOCATION OF CONSTRUCTION GRANTS APPROPRIATED FOR THE YEAR ENDING JUNE 30, 1973; INTERIM PAYMENTS; LIMITATIONS.

Section 3 of Pub. L. 93–207 provided that: "Funds available for reimbursement under Public Law 92–399 [making appropriations for Agriculture-Environmental and Consumer Protection Programs for the fiscal year ending June 30, 1973] shall be allocated in accordance with subsection (d) of section 206 of the Federal Water Pollution Control Act (86 Stat. 838) [subsec. (d) of this section], pro rata among all projects eligible under subsection (a) of such section 206 [subsec. (a) of this section] for which applications have been submitted and approved by the Administrator pursuant to such Act [this chapter]. Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim payments to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) and (2) for the purpose of determining allocation of sums available under Public Law 92–399, the unpaid balance of reimbursement due such projects shall be computed as of January 31, 1974. Upon completion by the Administrator of his audit and approval of all projects for which an application has been filed under subsection (a) of such section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. Amounts allocated to projects which are later determined to be in excess of entitlement shall be available for reallocation, until expended, to other qualified projects under subsection (a) of such section 206. In no event, however, shall any payments exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1287, 1376 of this title.

§ 1287. Authorization of appropriations.

There is authorized to be appropriated to carry out this subchapter, other than sections 1286(e), 1288 and 1289 of this title, for the fiscal year ending June 30, 1973, not to exceed $5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed $6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed $7,000,000,000. (June 30, 1948, ch. 758, title II, § 207, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 839, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(3), 87 Stat. 906.)

AMENDMENTS

1973—Pub. L. 93–207 added reference to section 1286(e) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1285, 1376 of this title.

§ 1288. Areawide waste treatment management.

(a) Identification and designation of areas having substantial water quality control problems.

For the purpose of encouraging and facilitating the development and implementation of areawide waste treatment management plans—

(1) The Administrator, within ninety days after October 18, 1972, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems.

(2) The Governor of each State, within sixty days after publication of the guidelines issued pursuant to paragraph (1) of this subsection, shall identify each area within the State which, as a result of urban-industrial concentrations or other factors, has substantial water quality control problems. Not later than one hundred and twenty days following such identification and after consultation with appropriate elected and other officials of local governments having jurisdiction in such areas, the Governor shall designate (A) the boundaries of each such area, and (B) a single representative organization, including elected officials from local governments or their designees, capable of developing effective areawide waste treatment management plans for such area. The Governor may in the same manner at any later time identify any additional area (or modify an existing area) for which he determines areawide waste treatment management to be appropriate, designate the boundaries of such area, and designate an organization capable of developing effective areawide waste treatment management plans for such area.

(3) With respect to any area which, pursuant to the guidelines published under paragraph (1) of this subsection, is located in two or more States, the Governors of the respective States shall consult and cooperate in carrying out the provisions of paragraph (2), with a view toward designating the boundaries of the interstate area having common water quality control problems and for which areawide waste treatment management plans would be most effective, and toward designating, within one hundred and eighty days after publication of guidelines issued pursuant to paragraph (1) of this subsection, of a single representative organization capable of developing effective areawide waste treatment management plans for such area.

(4) If a Governor does not act, either by designating or determining not to make a designation under paragraph (2) of this subsection, within the time required by such paragraph, or if, in the case of an interstate area, the Governors of the States involved do not designate a planning organization within the time required by paragraph (3) of this subsection, the chief elected officials of local governments within an area may by agreement designate (A) the boundaries for such an area, and (B) a single representative organization including elected officials from such local governments, or their designees, capable of developing an areawide waste treatment management plan for such area.

(5) Existing regional agencies may be designated under paragraphs (2), (3), and (4) of this subsection.

(6) The State shall act as a planning agency for all portions of such State which are not designated under paragraphs (2), (3), or (4) of this subsection.

(7) Designations under this subsection shall be subject to the approval of the Administrator.

(b) Planning process.

(1) Not later than one year after the date of designation of any organization under subsection (a) of this section such organization shall have in operation a continuing areawide waste treatment management planning process consistent with section 1281 of this title. Plans prepared in accordance with this process shall contain alternatives for waste treatment management, and be applicable to all wastes generated within the area involved. The initial plan prepared in accordance with such process shall be certified by the Governor and submitted to the Administrator not later than two years after the planning process is in operation.

(2) Any plan prepared under such process shall include, but not be limited to—

(A) the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works;

(B) the establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

(C) the establishment of a regulatory program to—

(i) implement the waste treatment management requirements of section 1281(c) of this title,

(ii) regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area, and

(iii) assure that any industrial or commercial wastes discharged into any treatment works in such area meet applicable pretreatment requirements;

(D) the identification of those agencies necessary to construct, operate, and maintain all facilities required by the plan and otherwise to carry out the plan;

(E) the identification of the measures necessary to carry out the plan (including financing), the period of time necessary to carry out the plan, the costs of carrying out the plan within such time, and the economic, social, and environmental impact of carrying out the plan within such time;

(F) a process to (i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including runoff from manure disposal areas, and from land used for livestock and crop production, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(G) a process to (i) identify, if appropriate, mine-related sources of pollution including new, current, and abandoned surface and underground mine runoff, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(H) a process to (i) identify construction activity related sources of pollution, and (ii) set forth procedures and methods (including land use requirements) to control to the extent feasible such sources;

(I) a process to (i) identify, if appropriate, salt water intrusion into rivers, lakes, and estuaries resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, ground water extraction, and diversion, and (ii) set forth procedures and methods to control such intrusion to the extent feasible where such procedures and methods are otherwise a part of the waste treatment management plan;

(J) a process to control the disposition of all residual waste generated in such area which could affect water quality; and

(K) a process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

(3) Areawide waste treatment management plans shall be certified annually by the Governor or his designee (or Governors or their designees, where more than one State is involved) as being consistent with applicable basin plans and such areawide waste treatment management plans shall be submitted to the Administrator for his approval.

(4) Whenever the Governor of any State determines (and notifies the Administrator) that consistency with a statewide regulatory program under section 1313 of this title so requires, the requirements of clauses (F) through (K) of paragraph (2) of this subsection shall be developed and submitted by the Governor to the Administrator for application to all regions within such State.

(c) Regional operating agencies.

(1) The Governor of each State, in consultation with the planning agency designated under subsection (a) of this section, at the time a plan is submitted to the Administrator, shall designate one or more waste treatment management agencies (which may be an existing or newly created local, regional, or State agency or political subdivision) for each area designated under subsection (a) of this section and submit such designations to the Administrator.

(2) The Administrator shall accept any such designation, unless, within 120 days of such designation, he finds that the designated management agency (or agencies) does not have adequate authority—

(A) to carry out appropriate portions of an areawide waste treatment management plan developed under subsection (b) of this section;

(B) to manage effectively waste treatment works and related facilities serving such area in conformance with any plan required by subsection (b) of this section;

(C) directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to subsection (b) of this section;

(D) to accept and utilize grants, or other funds from any source, for waste treatment management purposes;

(E) to raise revenues, including the assessment of waste treatment charges;

(F) to incur short- and long-term indebtedness;

(G) to assure in implementation of an areawide waste treatment management plan that each participating community pays its proportionate share of treatment costs;

(H) to refuse to receive any wastes from any municipality or subdivision thereof, which does not comply with any provisions of an approved plan under this section applicable to such area; and

(I) to accept for treatment industrial wastes.

(d) Conformity of works with area plan.

After a waste treatment management agency having the authority required by subsection (c) of this section has been designated under such subsection for an area and a plan for such area has been approved under subsection (b) of this section, the Administrator shall not make any grant for construction of a publicly owned treatment works under section 1281(g)(1) of this title within such area except to such designated agency and for works in conformity with such plan.

(e) Permits not to conflict with approved plans.

No permit under section 1342 of this title shall be issued for any point source which is in conflict with a plan approved pursuant to subsection (b) of this section.

(f) Grants.

(1) The Administrator shall make grants to any agency designated under subsection (a) of this section for payment of the reasonable costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) The amount granted to any agency under paragraph (1) of this subsection shall be 100 per centum of the costs of developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section for each of the fiscal years ending on June 30, 1973, June 30, 1974, and June 30, 1975, and shall not exceed 75 per centum of such costs in each succeeding fiscal year.

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of

the United States for the payment of its contribution to such proposal. There is authorized to be appropriated to carry out this subsection not to exceed $50,000,000 for the fiscal year ending June 30, 1973, not to exceed $100,000,000 for the fiscal year ending June 30, 1974, and not to exceed $150,000,000 for the fiscal year ending June 30, 1975.

(g) Technical assistance by Administrator.

The Administrator is authorized, upon request of the Governor or the designated planning agency, and without reimbursement, to consult with, and provide technical assistance to, any agency designated under subsection (a) of this section in the development of areawide waste treatment management plans under subsection (b) of this section.

(h) Technical assistance by Secretary of the Army.

(1) The Secretary of the Army, acting through the Chief of Engineers, in cooperation with the Administrator is authorized and directed, upon request of the Governor or the designated planning organization, to consult with, and provide technical assistance to, any agency designed[1] under subsection (a) of this section in developing and operating a continuing areawide waste treatment management planning process under subsection (b) of this section.

(2) There is authorized to be appropriated to the Secretary of the Army, to carry out this subsection, not to exceed $50,000,000 per fiscal year for the fiscal years ending June 30, 1973, and June 30, 1974. (June 30, 1948, ch. 758, title II, § 208, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 839.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1284, 1287, 1289, 1313, 1314, 1362, 1375, 1376 of this title.

§ 1289. Basin planning.

(a) The President, acting through the Water Resources Council, shall, as soon as practicable, prepare a Level B plan under the Water Resources Planning Act for all basins in the United States. All such plans shall be completed not later than January 1, 1980, except that priority in the preparation of such plans shall be given to those basins and portions thereof which are within those areas designated under paragraphs (2), (3), and (4) of subsection (a) of section 1288 of this title.

(b) The President, acting through the Water Resources Council, shall report annually to Congress on progress being made in carrying out this section. The first such report shall be submitted not later than January 31, 1973.

(c) There is authorized to be appropriated to carry out this section not to exceed $200,000,000. (June 30, 1948, ch. 758, title II, § 209, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

REFERENCES IN TEXT

The Water Resources Planning Act referred to in text, is classified to section 1962 et seq. of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1287, 1313, 1375, 1376 of this title.

[1] So in original probably should be "designated".

§ 1290. Annual survey.

The Administrator shall annually make a survey to determine the efficiency of the operation and maintenance of treatment works constructed with grants made under this chapter, as compared to the efficiency planned at the time the grant was made. The results of such annual survey shall be included in the report required under section 1375(a) of this title. (June 30, 1948, ch. 758, title II, § 210, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1375 of this title.

§ 1291. Sewage collection systems.

No grant shall be made for a sewage collection system under this subchapter unless such grant (1) is for replacement or major rehabilitation of an existing collection system and is necessary to the total integrity and performance of the waste treatment works servicing such community, or (2) is for a new collection system in an existing community with sufficient existing or planned capacity adequately to treat such collected sewage and is consistent with section 1281 of this title. (June 30, 1948, ch. 758, title II, § 211, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 843.)

§ 1292. Definitions.

As used in this subchapter—

(1) The term "construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(2)(A) The term "treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement section 1281 of this title, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment.

(B) In addition to the definition contained in subparagraph (A) of this paragraph, "treatment works" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems. Any application for construction grants which includes wholly or in part such methods or systems shall,

in accordance with guidelines published by the Administrator pursuant to subparagraph (C) of this paragraph, contain adequate data and analysis demonstrating such proposal to be, over the life of such works, the most cost efficient alternative to comply with sections 1311 or 1312 of this title, or the requirements of section 1281 of this title.

(C) For the purposes of subparagraph (B) of this paragraph, the Administrator shall, within one hundred and eighty days after October 18, 1972, publish and thereafter revise no less often than annually, guidelines for the evaluation of methods, including cost-effective analysis, described in subparagraph (B) of this paragraph.

(3) The term "replacement" as used in this subchapter means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed. (June 30, 1948, ch. 758, title II, § 212, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 844.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1317, 1342, 1345, 1375 of this title.

SUBCHAPTER III.—STANDARDS AND ENFORCEMENT

§ 1311. Effluent limitations.

(a) Illegality of pollutant discharges except in compliance with law.

Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

(b) Timetable for achievement of objectives.

In order to carry out the objective of this chapter there shall be achieved—

(1) (A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 1314(b) of this title, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 1317 of this title; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 1283 of this title prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 1314(d)(1) of this title; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulations (under authority preserved by section 1370 of this title) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this chapter.

(2) (A) not later than July 1, 1983, effluent limitations for categories and classes of point sources, other than publicly owned treament works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 1325 of this title), that such elimination is technologically and economically achievable for a category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 1314(b)(2) of this title, or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 1317 of this title; and

(B) not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements set forth in section 1281(g)(2)(A) of this title.

(c) Modification of timetable.

The Administrator may modify the requirements of subsection (b)(2)(A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Review and revision of effluent limitations.

Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) All point discharge source application of effluent limitations.

Effluent limitations established pursuant to this section or section 1312 of this title shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this chapter.

(f) Illegality of discharge of radiological, chemical, or biological warfare agents or high-level radioactive waste.

Notwithstanding any other provisions of this chapter it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters. (June 30,

1948, ch. 758, title III, § 301, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 844.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1292, 1312, 1313, 1314, 1319, 1325, 1326, 1341, 1342, 1365, 1367, 1369 of this title.

§ 1312. Water quality related effluent limitations.

(a) Whenever, in the judgment of the Administrator, discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 1311(b)(2) of this title, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b)(1) Prior to establishment of any effluent limitation pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this chapter) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this chapter), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 1311 of this title. (June 30, 1948, ch. 758, title III, § 302, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 846.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1292, 1311, 1313, 1319, 1341, 1342, 1365, 1367, 1369 of this title.

§ 1313. Water quality standards and implementation plans.

(a) Existing water quality standards.

(1) In order to carry out the purpose of this chapter, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is a waiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after October 18, 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) Proposed regulations.

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the

Federal Water Pollution Control Act Amendments of 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) Review; revised standards; publication.

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

(d) Identification of areas with insufficient controls; maximum daily load.

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1)(B) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administra-

tor shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1)(A) and (1)(B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.

(e) Continuing planning process.

(1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this chapter.

(2) Each State shall submit not later than 120 days after October 18, 1972, to the Administrator for his approval a proposed continuing planning process which is consistent with this chapter. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this chapter. The Administrator shall not approve any State permit program under subchapter IV of this chapter for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 1311(b)(1), section 1311(b)(2), section 1316, and section 1317 of this title, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable area-wide waste management plans under section 1288 of this title, and applicable basin plans under section 1289 of this title;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 1311 and 1312 of this title.

(f) Earlier compliance.

Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 1311(b)(1) and 1311(b)(2) of this title nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Heat standards.

Water quality standards relating to heat shall be consistent with the requirements of section 1326 of this title.

(h) Thermal water quality standards.

For the purposes of this chapter the term "water quality standards" includes thermal water quality standards. (June 30, 1948, ch. 758, title III, § 303, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 846.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act Amendments of 1972, referred to in text, is Pub. L. 92-500, Oct. 18, 1972, 86 Stat. 816, which fundamentally amended, reorganized, and expanded the Federal Water Pollution Control Act. The Federal Water Pollution Control Act, or "this Act", as thus amended, is now set out in this chapter. For prior classification of the Federal Water Pollution Control Act, see Codification note under section 1251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1252, 1284, 1288, 1314, 1326, and 1375 of this title; title 43 section 615aaa.

§ 1314. Information and guidelines.

(a) Criteria development and publication.

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 1313 of this title, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(b) Effluent limitation guidelines.

For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b)(1) of section 1311 of this title shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2)(A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b)(2) of section 1311 of this title to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate; and

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants.

(c) Pollution discharge elimination procedures.

The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after October 18, 1972 (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 1316 of this title. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) Secondary treatment information; alternative waste treatment management techniques and systems.

(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within sixty days after October 18, 1972 (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after October 18, 1972 (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 1281 of this title.

(e) Identification and evaluation of nonpoint sources of pollution; processes, procedures, and methods to control pollution.

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 1288 of this title, within one year after October 18, 1972 (and from time to time thereafter) information including

(1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(f) Guidelines for pretreatment of pollutants.

(1) For the purpose of assisting States in carrying out programs under section 1342 of this title, the Administrator shall publish, within one hundred and twenty days after October 18, 1972, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(g) Test procedures guidelines.

The Administrator shall, within one hundred and eighty days from October 18, 1972, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 1341 of this title or permit application pursuant to section 1342 of this title.

(h) Guidelines for monitoring, reporting, enforcement, funding, personnel, and manpower.

The Administrator shall (1) within sixty days after October 18, 1972, promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point sources of discharge subject to any State program under section 1342 of this title, and (2) within sixty days from October 18, 1972, promulgate guidelines establishing the minimum procedural and other elements of any State program under section 1342 of this title, which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(i) Restoration and enhancement of publicly owned fresh water lakes.

The Administrator shall, within 270 days after October 18, 1972 (and from time to time thereafter), issue such information on methods, procedures, and processes as may be appropriate to restore and enhance the quality of the Nation's publicly owned fresh water lakes.

(j) Agreements with Secretaries of Agriculture, Army, and Interior to provide maximum utilization of programs to achieve and maintain water quality; transfer of funds; authorization of appropriations.

(1) The Administrator shall, within six months from October 18, 1972, enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior to provide for the maximum utilization of the appropriate programs authorized under other Federal law to be carried out by such Secretaries for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 1288 of this title.

(2) The Administrator, pursuant to any agreement under paragraph (1) of this subsection is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, or the Secretary of the Interior any funds appropriated under paragraph (3) of this subsection to supplement any funds otherwise appropriated to carry out appropriate programs authorized to be carried out by such Secretaries.

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974. (June 30, 1948, ch. 758, title III, § 304, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 850.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1255, 1311, 1313, 1315, 1342, 1369, 1374, 1376 of this title.

§ 1315. Water quality inventory; State reports; transmittal to Congress.

(a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies, shall prepare a report to be submitted to the Congress on or before January 1, 1974, which shall—

(1) describe the specific quality, during 1973, with appropriate supplemental descriptions as

shall be required to take into account seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants, into all navigable waters and the waters of the contiguous zone; and

(3) identify specifically those navigable waters, the quality of which—

(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

(B) can reasonably be expected to attain such level by 1977 or 1983; and

(C) can reasonably be expected to attain such level by any later date.

(b) (1) Each State shall prepare and submit to the Administrator by January 1, 1975, and shall bring up to date each year thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this chapter (as identified by the Administrator pursuant to criteria published under section 1314(a) of this title) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this chapter, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and annually thereafter. (June 30, 1948, ch. 758, title III, § 305, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 853.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1318, 1369 of this title.

§ 1316. National standards of performance.

(a) Definitions.

For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflect the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(b) Categories of sources; Federal standards of performance for new sources.

(1) (A) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;

glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) State enforcement of standards of performance.

Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

(d) Protection from more stringent standards.

Notwithstanding any other provision of this chapter, any point source the construction of which is commenced after October 18, 1972, and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of Title 26 whichever period ends first.

(e) Illegality of operation of new sources in violation of applicable standards of performance.

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source. (June 30, 1948, ch. 758, title III, § 306, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1314, 1317, 1319, 1323, 1326, 1341, 1342, 1365, 1367, 1369, 1371, 1374 of this title.

§ 1317. Toxic and pretreatment effluent standards; establishment; revision; illegality of source operation in violation of standards.

(a)(1) The Administrator shall, within ninety days after October 18, 1972, publish (and from time to time thereafter revise) a list which includes any toxic pollutant or combination of such pollutants for which an effluent standard (which may include a prohibition of the discharge of such pollutants or combination of such pollutants) will be established under this section. The Administrator in publishing such list shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms.

(2) Within one hundred and eighty days after the date of publication of any list, or revision thereof, containing toxic pollutants or combination of pollutants under paragraph (1) of this subsection, the Administrator, in accordance with section 553 of Title 5, shall publish a proposed effluent standard (or a prohibition) for such pollutant or combination of pollutants, which shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and he shall publish a notice for a public hearing on such proposed standard to be held within thirty days. As soon as possible after such hearing, but not later than six months after publication of the proposed effluent standard (or prohibition), unless the Administrator finds, on the record, that a modification of such proposed standard (or prohibition) is justified based upon a preponderance of evidence adduced at such hearings, such standard (or prohibition) shall be promulgated.

(3) If after a public hearing the Administrator finds that a modification of such proposed standard (or prohibition) is justified, a revised effluent standard (or prohibition) for such pollutant or combination of pollutants shall be promulgated immediately. Such standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case more than one year from the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b)(1) The Administrator shall, within one hundred and eighty days after October 18, 1972, and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 1292 of this title) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 1292 of this title) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works.

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternatives change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 1316 of this title if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 1316 of this title for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard. (June 30, 1948, ch. 758, title III, § 307, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1313, 1319, 1323, 1341, 1342, 1365, 1367, 1369, 1374 of this title.

§ 1318. Inspections, monitoring, and entry.

(a) Whenever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 1315, 1321, 1342, and 1364 of this title—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Any records reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(c) Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States). (June 30, 1948, ch. 758, title III, § 308, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 858.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1319, 1342 of this title.

§ 1319. Enforcement.

(a) State enforcement; compliance orders.

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 1311, 1312, 1316, 1317, or 1318 of this title in a permit issued by a State under an approved permit program under section 1342 of this title he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 1311, 1312, 1316, 1317, or 1318 of this title, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by him or by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 1318 of this title shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(b) Civil actions.

The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) Criminal penalties.

(1) Any person who willfully or negligently violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator or by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 1362(5) of this title, any responsible corporate officer.

(d) Civil penalties.

Any person who violates section 1311, 1312, 1316, 1317, or 1318 of this title, or any permit condition or limitation implementing any of such sections in a permit issued under section 1342 of this title by the Administrator, or by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) State liability for judgments and expenses.

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment. (June 30, 1948, ch. 758, title III, § 309, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 859.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1342, 1365, 1368 of this title.

§ 1320. International pollution abatement.

(a) Hearing; participation by foreign nations.

Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

(b) Functions and responsibilities of Administrator not affected.

The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this chapter.

(c) Hearing board; composition; findings of fact; recommendations; implementation of board's decision

The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this chapter.

(d) Report by alleged polluter.

In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of Title 18. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Compensation of board members.

Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS–18, as provided in the General Schedule under section 5332 of Title 5, and shall, notwithstanding the limitations of sections 5703 and 5704 of Title 5, be fully reimbursed for travel, subsistence and related expenses.

(f) Enforcement proceedings.

When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct. (June 30, 1948, ch. 758, title III, § 310, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 860.)

§ 1321. Oil and hazardous substance liability.

(a) Definitions.

For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping;

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership.

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section.

(b) Congressional declaration of policy against discharges of oil or hazardous substances; designation of hazardous susbtances; determination of removability; liability; penalties.

(1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(2)(A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone, present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B)(i) The Administrator shall include in any designation under subparagraph (A) of this subsection a determination whether any such designated hazardous substance can actually be removed.

(ii) The owner or operator of any vessel, onshore facility, or offshore facility from which there is discharged during the two-year period beginning on October 18, 1972, any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided under subsection (f) of this section, as appropriate, to the United States for a civil penalty per discharge established by the Administrator based on toxicity, degradability, and dispersal characteristics of such substance, in an amount not to exceed $50,000, except that where the United States can show that such discharge was a result

of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States for a civil penalty in such amount as the Administrator shall establish, based upon the toxicity, degradability, and dispersal characteristics of such substance.

(iii) After the expiration of the two-year period referred to in clause (ii) of this subparagraph, the owner or operator of any vessel, onshore facility, or offshore facility, from which there is discharged any hazardous substance determined not removable under clause (i) of this subparagraph shall be liable, subject to the defenses to liability provided in subsection (f) of this section, to the United States for either one or the other of the following penalties, the determination of which shall be in the discretion of the Administrator:

(aa) a penalty in such amount as the Administrator shall establish, based on the toxicity, degradability, and dispersal characteristics of the substance, but not less than $500 nor more than $5,000; or

(bb) a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than $5,000,000 in the case of a discharge from a vessel and $500,000 in the case of a discharge from an onshore or offshore facility.

(iv) The Administrator shall establish by regulation, for each hazardous substance designated under subparagraph (A) of this paragraph, and within 180 days of the date of such designation, a unit of measurement based upon the usual trade practice and, for the purpose of determining the penalty under clause (iii) (bb) of this subparagraph, shall establish for each such unit a fixed monetary amount which shall be not less than $100 nor more than $1,000 per unit. He shall establish such fixed amount based on the toxicity, degradability, and dispersal characteristics of the substance.

(3) The discharge of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in harmful quantities as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone, where permitted under article IV of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

(4) The President shall by regulation, to be issued as soon as possible after October 18, 1972, determine for the purposes of this section, those quantities of oil and any hazardous substance the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches except that in the case of the discharge of oil into or upon the waters of the contiguous zone, only those discharges which threaten the fishery resources of the contiguous zone or threaten to pollute or contribute to the pollution of the territory or the territorial sea of the United States may be determined to be harmful.

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year, or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

(6) Any owner or operator of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 91 of Title 46 of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(c) Removal of discharged oil or hazardous substances; National Contingency Plan.

(1) Whenever any oil or a hazardous substance is discharged, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after October 18, 1972, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including

containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control. conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances to the appropriate Federal agency;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Maritime disaster discharges.

Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection shall be a cost incurred by the United States Government for the purposes of subsection (f) of this section in the removal of oil or hazardous substance.

(e) Judicial relief.

In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f) Liability for actual costs of removal.

(1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $100 per gross ton of such vessel or $14,000,000 whichever is lesser, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C)

negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for the removal of such oil or substance by the United States Government in an amount not to exceed $8,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

(g) Third party liability.

In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) of this section for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section, the liability of such third party under this subsection shall not exceed $100 per gross ton of such vessel or $14,000,000, whichever is the lesser. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred in such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b)(3) of this section was the result of willful negligence or willful misconduct within the privity and knowledge of such third party, such third party shall be liable to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) Rights against third parties who caused or contributed to discharge.

The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) the United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) Recovery of removal costs.

(1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b)(3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing causes.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k) of this section.

(j) Regulations; penalty.

(1) Consistent with the National Contingency Plan required by subsection (c)(2) of this section, as soon as practicable after October 18, 1972, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances. (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the likelihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by the President.

(k) Authorization of appropriations.

There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury not to exceed $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (*l*) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to, or deposited in, said fund shall remain available until expended.

(*l*) Administration.

The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Boarding and inspection of vessels; arrest; execution of warrants or other process.

Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) Jurisdiction.

The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i)(1) of this section, arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) Obligation for damages unaffected; local authority not preempted; existing Federal authority not modified or affected.

(1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this chapter or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) Financial responsibility.

(1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States

or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of $100 per gross ton, or $14,000,000 whichever is the lesser, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after October 18, 1972, with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency head within sixty days after October 18, 1972. Regulations necessary to implement this subsection shall be issued within six months after October 18, 1972.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 91 of Title 46 to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with. (June 30, 1948, ch. 758, title III, § 311, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 862, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(4), 87 Stat. 906.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (1)(2), is classified to section 1331 et seq. of Title 43, Public Lands.

AMENDMENTS

1973—Subsec. (f)(1). Pub. L. 93–207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section.

Subsec. (f)(2). Pub. L. 93–207, § 1(4)(A), (B), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in two places, and Administrator for Secretary.

Subsec. (f)(3). Pub. L. 93–207, § 1(4)(A), substituted reference to subsec. (b)(3) of this section for reference to subsecs. (b)(2) of this section.

Subsec. (g). Pub. L. 93–207, § 1(4)(C), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in three places.

Subsec. (i). Pub. L. 93–207, § 1(4)(C), substituted reference to subsec. (b)(3) of this section for reference to subsec. (b)(2) of this section in par. (1).

EX. ORD. NO. 11735. ASSIGNMENT OF PRESIDENTIAL FUNCTIONS

Ex. Ord. No. 11735, Aug. 3, 1973, 38 F.R. 21243, provided:

By virtue of the authority vested in me by section 311 of the Federal Water Pollution Control Act, as amended, by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500; 86 Stat. 816 at 862; 33 U.S.C. 1321), hereinafter referred to as the act, by section 301 of title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

SECTION 1. *Administrator of the Environmental Protection Agency.* The Administrator of the Environmental Protection Agency is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsections (b)(3) and (b)(4) of section 311 of the act [subsecs. (b)(3) and (b)(4) of the section] relating to the determination of those quantities of oil and hazardous substances the discharge of which, at such times, locations, circumstances, and conditions, will be harmful to the public health or welfare of the United States and those which will not be harmful;

(2) the authority of the President under subsection (c)(2)(G) of section 311 of the act [subsec. (c)(2)(G) of this section], relating to identification of dispersants and other chemicals to be used;

(3) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from non-transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action; and

(4) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from non-transportation-related onshore and offshore facilities, and to contain such discharges.

SEC. 2. *Secretary of Department in which the Coast Guard is Operating.* The Secretary of the Department in which the Coast Guard is operating is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (e) of section 311 of the act [subsec. (e) of this section], relating to determinations of imminent and substantial threat because of actual or threatened discharges of oil or hazardous substances from transportation-related onshore and offshore facilities, and relating to securing relief necessary to abate such actual or threatened discharges through court action;

(2) the authority of the President under subsection (j)(1)(C) of section 311 of the act [subsec. (j)(1)(C) of this section], relating to the establishment of procedures, methods, and equipment and other requirements for

equipment to prevent discharges of oil and hazardous substances from vessels and transportation-related onshore and offshore facilities, and to contain such discharges;

(3) the authority of the President under subsection (j)(1)(D) of section 311 of the act [subsec. (j)(1)(D) of this section], relating to the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes;

(4) the authority to administer the revolving fund established pursuant to subsection (k) of section 311 of the act [subsec. (k) of this section]; and

(5) the authority under subsection (m) of section 311 of the act [subsec. (m) of this section], relating to the boarding and inspection of vessels, the arrest of persons violating section 311 [this section], and the execution of warrants or other process pursuant to that section.

SEC. 3. *Federal Maritime Commission.* The Federal Maritime Commission is designated and empowered to exercise, without the approval, ratification, or other action of the President, the following:

(1) the authority of the President under subsection (p)(1) of section 311 of the act [subsec. (p)(1) of this section], relating to the issuance of regulations governing evidence of financial responsibility for vessels to meet liability to the United States; and

(2) the authority under subsection (p)(2) of section 311 of the act [subsec. (p)(2) of this section], relating to the administration of subsection (p) [subsec. (p) of this section].

SEC. 4. *Council on Environmental Quality.* The Council on Environmental Quality is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority under subsection (c)(2) of section 311 of the act [subsec. (c)(2) of this section], providing for the preparation, publication, revision or amendment of a National Contingency Plan for the removal of oil and hazardous substance discharges (hereinafter referred to as the National Contingency Plan).

SEC. 5. *Other Assignments.*

(a) The head of each Federal department and agency having responsibilities under the National Contingency Plan (36 FR 16215), as now or hereafter amended, is designated and empowered to exercise, without the approval, ratification, or other action of the President, in accordance with that plan, the authority under subsection (c)(1) of section 311 of the act [subsec. (c)(1) of this section]; relating to the removal of oil and hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone.

(b) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating, respectively, in and for the waters and areas for which each has responsibility for providing or furnishing on-scene-coordinators under the National Contingency Plan, are designated and empowered to exercise, without approval, ratification, or other action of the President, the following:

(1) the authority under subsection (c)(2)(C) of section 311 of the act [subsec. (c)(2)(C) of this section], relating to the determination of major ports for establishment of emergency task forces;

(2) the authority under subsection (d) of section 311 of the act [subsec. (d) of this section], relating to the coordination and direction of the removal or elimination of threats of pollution hazards from discharges, or imminent discharges, of oil or hazardous substances, and the removal and destruction of vessels;

(3) the authority of the President under subsection (j)(1)(A) of section 311 of the act [subsec. (j)(1)(A) of this section], relating to the establishment of methods and procedures for the removal of discharged oil and hazardous substances; and

(4) the authority of the President under subsection (j)(1)(B) of section 311 of the act [subsec. (j)(1)(B) of this section], relating to the establishment of criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans.

(c) The Administrator of the Environmental Protection Agency and the Secretary of the Department in which the Coast Guard is operating are designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under section 311(j)(2) [subsec. (j)(2) of this section] with respect to assessing and compromising civil penalties in connection with enforcement of the respective regulations issued by each pursuant to this order.

SEC. 6. *Consultation.* Authorities and functions delegated or assigned by this order shall be exercised subject to consultation with the Secretaries of departments and the heads of agencies with operating or regulatory responsibilities which may be significantly affected.

SEC. 7. *Agency to Receive Notices of Discharges of Oil or Hazardous Substances.* The Coast Guard is hereby designated the "appropriate agency" for the purpose of receiving the notice of discharge of oil or hazardous substances required by subsection (b)(5) of section 311 of the act [subsec. (b)(5) of this section]. The Commandant of the Coast Guard shall issue regulations implementing this designation.

SEC. 8. Without derogating from any action heretofore taken thereunder, Executive Order No. 11548 of July 20, 1970, is hereby superseded.

RICHARD NIXON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 1318, 1376, 1402, 1486, 1517 of this title; title 43 section 1653.

§ 1322. Marine sanitation devices.

(a) Definitions.

For the purpose of this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulations under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(4) "United States" includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands;

(5) "marine sanitation device" includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage;

(6) "sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes;

(7) "manufacturer" means any person engaged in the manufacturing, assembling, or importation of marine sanitation devices or of vessels subject to standards and regulations promulgated under this section;

(8) "person" means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel;

(9) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(b) Federal standards of performance.

(1) As soon as possible, after October 18, 1972, and subject to the provisions of section 1254(j) of this title, the Administrator, after consultation with the Secretary of the department in which the Coast Guard is operating, after giving appropriate consideration to the economic costs involved, and within the limits of available technology, shall promulgate Federal standards of performance for marine sanitation devices (hereafter in this section referred to as "standards") which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters from new vessels and existing vessels, except vessels not equipped with installed toilet facilities. Such standards shall be consistent with maritime safety and the marine and navigation laws and regulations and shall be coordinated with the regulations issued under this subsection by the Secretary of the department in which the Coast Guard is operating. The Secretary of the department in which the Coast Guard is operating shall promulgate regulations, which are consistent with standards promulgated under this subsection and with maritime safety and the marine and navigation laws and regulations governing the design, construction, installation, and operation of any marine sanitation device on board such vessels.

(2) Any existing vessel equipped with a marine sanitation device on the date of promulgation of initial standards and regulations under this section, which device is in compliance with such initial standards and regulations, shall be deemed in compliance with this section until such time as the device is replaced or is found not to be in compliance with such initial standards and regulations.

(c) Initial standards; effective dates; revision; waiver.

(1) Initial standards and regulations under this section shall become effective for new vessels two years after promulgation; and for existing vessels five years after promulgation. Revisions of standards and regulations shall be effective upon promulgation, unless another effective date is specified, except that no revision shall take effect before the effective date of the standard or regulation being revised.

(2) The Secretary of the department in which the Coast Guard is operating with regard to his regulatory authority established by this section, after consultation with the Administrator, may distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types, and sizes of vessels (including existing vessels equipped with marine sanitation devices on the date of promulgation of the initial standards required by this section), and, upon application, for individual vessels.

(d) Vessels owned and operated by the United States.

The provisions of this section and the standards and regulations promulgated hereunder apply to vessels owned and operated by the United States unless the Secretary of Defense finds that compliance would not be in the interest of national security. With respect to vessels owned and operated by the Department of Defense, regulations under the last sentence of subsection (b)(1) of this section and certifications under subsection (g)(2) of this section shall be promulgated and issued by the Secretary of Defense.

(e) Pre-promulgation consultation.

Before the standards and regulations under this section are promulgated, the Administrator and the Secretary of the department in which the Coast Guard is operating shall consult with the Secretary of State; the Secretary of Health, Education, and Welfare; the Secretary of Defense; the Secretary of the Treasury; the Secretary of Commerce; other interested Federal agencies; and the States and industries interested; and otherwise comply with the requirements of section 553 of Title 5.

(f) Regulation by States or political subdivisions thereof; complete prohibition upon discharge of sewage.

(1) After the effective date of the initial standards and regulations promulgated under this section, no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section.

(2) If, after promulgation of the initial standards and regulations and prior to their effective date, a vessel is equipped with a marine sanitation device in compliance with such standards and regulations and the installation and operation of such device is in accordance with such standards and regulations, such standards and regulations shall, for the purposes of paragraph (1) of this subsection, become effective with respect to such vessel on the date of such compliance.

(3) After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply. Upon application of the State, the Administrator shall make such determination within 90 days of the date of such application.

(4) If the Administrator determines upon application by a State that the protection and enhancement of the quality of specified waters within such State requires such a prohibition, he shall by regulation completely prohibit the discharge from a vessel of any sewage (whether treated or not) into such waters.

(g) Sales limited to certified devices; certification of test device; recordkeeping; reports.

(1) No manufacturer of a marine sanitation device shall sell, offer for sale, or introduce or deliver for introduction in interstate commerce, or import into the United States for sale or resale any marine

sanitation device manufactured after the effective date of the standards and regulations promulgated under this section unless such device is in all material respects substantially the same as a test device certified under this subsection.

(2) Upon application of the manufacturer, the Secretary of the department in which the Coast Guard is operating shall so certify a marine sanitation device if he determines, in accordance with the provisions of this paragraph, that it meets the appropriate standards and regulations promulgated under this section. The Secretary of the department in which the Coast Guard is operating shall test or require such testing of the device in accordance with procedures set forth by the Administrator as to standards of performance and for such other purposes as may be appropriate. If the Secretary of the department in which the Coast Guard is operating determines that the device is satisfactory from the standpoint of safety and any other requirements of maritime law or regulation, and after consideration of the design, installation, operation, material, or other appropriate factors, he shall certify the device. Any device manufactured by such manufacturer which is in all material respects substantially the same as the certified test device shall be deemed to be in conformity with the appropriate standards and regulations established under this section.

(3) Every manufacturer shall establish and maintain such records, make such reports, and provide such information as the Administrator or the Secretary of the department in which the Coast Guard is operating may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this section and regulations issued thereunder and shall, upon request of an officer or employee duly designated by the Administrator or the Secretary of the department in which the Coast Guard is operating, permit such officer or employee at reasonable times to have access to and copy such records. All information reported to or otherwise obtained by the Administrator or the Secretary of the department in which the Coast Guard is operating or their representatives pursuant to this subsection which contains or relates to a trade secret or other matter referred to in section 1905 of Title 18 shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this section. This paragraph shall not apply in the case of the construction of a vessel by an individual for his own use.

(h) Sale and resale of properly equipped vessels; operability of certified marine sanitation devices.

After the effective date of standards and regulations promulgated under this section, it shall be unlawful—

(1) for the manufacturer of any vessel subject to such standards and regulations to manufacture for sale, to sell or offer for sale, or to distribute for sale or resale any such vessel unless it is equipped with a marine sanitation device which is in all material respects substantially the same as the appropriate test device certified pursuant to this section;

(2) for any person, prior to the sale or delivery of a vessel subject to such standards and regulations to the ultimate purchaser, wrongfully to remove or render inoperative any certified marine sanitation device or element of design of such device installed in such vessel;

(3) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under this section; and

(4) for a vessel subject to such standards and regulations to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to this section.

(i) Jurisdiction to restrain violations; contempts.

The district courts of the United States shall have jurisdictions to restrain violations of subsection (g)(1) of this section and subsections (h)(1) through (3) of this section. Actions to restrain such violations shall be brought by, and in, the name of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(j) Penalties.

Any person who violates subsection (g)(1) of this section or clause (1) or (2) of subsection (h) of this section shall be liable to a civil penalty of not more than $5,000 for each violation. Any person who violates clause (4) of subsection (h) of this section or any regulation issued pursuant to this section shall be liable to a civil penalty of not more than $2,000 for each violation. Each violation shall be a separate offense. The Secretary of the department in which the Coast Guard is operating may assess and compromise any such penalty. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance, after notification of a violation, shall be considered by said Secretary.

(k) Enforcement authority.

The provisions of this section shall be enforced by the Secretary of the department in which the Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States to carry out the provisions of this section.

(l) Boarding and inspection of vessels; execution of warrants and other process.

Anyone authorized by the Secretary of the department in which the Coast Guard is operating to enforce the provisions of this section may, except as to

public vessels, (1) board and inspect any vessel upon the navigable waters of the United States and (2) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(m) Enforcement in United States possessions.

In the case of Guam and the Trust Territory of the Pacific Islands, actions arising under this section may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the District Court for the District of the Canal Zone. (June 30, 1948, ch. 758, title III, § 312, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 871.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1362, 1402 of this title.

§ 1323. Federal facilities pollution control.

Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with Federal, State, interstate, and local requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements, including the payment of reasonable service charges. The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any such a requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 1316 or 1317 of this title. No such exemptions shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption. (June 30, 1948, ch. 758, title III, § 313, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1365 of this title.

§ 1324. Clean lakes.

(a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned fresh water lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under this section.

(c) (1) The amount granted to any State for any fiscal year under this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under this section.

(2) There is authorized to be appropriated $50,000,000 for the fiscal year ending June 30, 1973; $100,000,000 for the fiscal year 1974; and $150,000,000 for the fiscal year 1975 for grants to States under this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under this section. (June 30, 1948, ch. 758, title III, § 314, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1325. National Study Commission.

(a) Establishment.

There is established a National Study Commission, which shall make a full and complete investigation and study of all of the technological aspects of achieving, and all aspects of the total economic, social, and environmental effects of achieving or not achieving, the effluent limitations and goals set forth for 1983 in section 1311(b)(2) of this title.

(b) Membership; chairman.

Such Commission shall be composed of fifteen members, including five members of the Senate, who are members of the Public Works committee, appointed by the President of the Senate, five members of the House, who are members of the Public Works committee, appointed by the Speaker of the House, and five members of the public appointed by the President. The Chairman of such Commission shall be elected from among its members.

(c) Contract authority.

In the conduct of such study, the Commission is authorized to contract with the National Academy of Sciences and the National Academy of Engineering (acting through the National Research Council), the National Institute of Ecology, Brookings Institution, and other nongovernmental entities, for the investigation of matters within their competence.

(d) Cooperation of departments, agencies, and instrumentalities of executive branch.

The heads of the departments, agencies and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section.

and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(e) Report to Congress.

A report shall be submitted to the Congress of the results of such investigation and study, together with recommendations, not later than three years after October 18, 1972.

(f) Compensation and allowances.

The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS–18, as provided in the General Schedule under section 5332 of Title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(g) Appointment of personnel.

In addition to authority to appoint personnel subject to the provisions of Title 5 governing appointments in the competitive service, and to pay such personnel in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43 of the Senate and House of Representatives, respectively.

(h) Authorization of appropriation.

There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,000,000. (June 30, 1948, ch. 758, title III, § 315, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 875, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(5), 87 Stat. 906; Jan. 2, 1975, Pub. L. 93–592, § 5, 88 Stat. 1925.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to subsec. (f), has reference to the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

AMENDMENTS

1975—Subsec. (h). Pub. L. 93–592 substituted "$17,000,000" for "$15,000,000".

1973—Subsec. (g). Pub. L. 93–207 added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 93–207 redesignated former subsec. (g) as (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1376 of this title.

§ 1326. Thermal discharges.

(a) Effluent limitations that will assure protection and propagation of balanced, indigenous population of shellfish, fish, and wildlife.

With respect to any point source otherwise subject to the provisions of section 1311 of this title or section 1316 of this title, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Cooling water intake structures.

Any standard established pursuant to section 1311 of this title or section 1316 of this title and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Period of protection from more stringent effluent limitations following discharge point source modification commenced after October 18, 1972.

Notwithstanding any other provision of this chapter, any point source of a discharge having a thermal component, the modification of which point source is commenced after October 18, 1972, and which, as modified, meets effluent limitations established under section 1311 of this title or, if more stringent, effluent limitations established under section 1313 of this title and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of Title 26, whichever period ends first. (June 30, 1948, ch. 758, title III, § 316, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 876.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1313 of this title.

§ 1327. Investigation and study of feasibility of alternate methods of financing the cost of preventing, controlling, and abating pollution.

(a) The Administrator shall continue to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling and abating pollution as directed in the Water Quality

Improvement Act of 1970, including, but not limited to, the feasibility of establishing a pollution abatement trust fund. The results of such investigation and study shall be reported to the Congress not later than two years after enactment of this title, together with recommendations of the Administrator for financing the programs for preventing, controlling and abating pollution for the fiscal years beginning after fiscal year 1976, including any necessary legislation.

(b) There is authorized to be appropriated for use in carrying out this section, not to exceed $1,000,000. (June 30, 1948, ch. 758, title III, § 317, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 877.)

REFERENCES IN TEXT

The investigation and study of the feasibility of alternate methods of financing the cost of preventing, controlling, and abating pollution called for by the Water Quality Improvement Act of 1970, referred to in text, was directed by section 109 of Pub. L. 91–224, title I, Apr. 3, 1970, 84 Stat. 113, set out as a note under section 1151 of this title. Such authorization called for a report to Congress no later than December 31, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1376 of this title.

§ 1328. Aquaculture.

(a) The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision.

(b) The Administrator shall by regulation, not later than January 1, 1974, establish any procedures and guidelines he deems necessary to carry out this section. (June 30, 1948, ch. 758, title III, § 318, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 877.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1342 of this title.

SUBCHAPTER IV.—PERMITS AND LICENSES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1313, 1342 of this title.

§ 1341. Certification.

(a) Compliance with applicable requirements; application; procedures; license suspension.

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371 (c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 1311, 1312, 1316, and 1317 of this title because of changes since the con-

struction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 1311, 1312, 1316, or 1317 of this title.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 1311, 1312, 1316, or 1317 of this title.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this chapter that such facility or activity has been operated in violation of the applicable provisions of section 1311, 1312, 1316, or 1317 of this title.

(6) No Federal agency shall be deemed to be an applicant for the purposes of this subsection.

(7) Except with respect to a permit issued under section 1342 of this title, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Compliance with other provisions of law setting applicable water quality requirements.

Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, or State or interstate agency, or applicant, comment when requested by any such department or agency on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) Authority of Secretary of the Army to permit use of spoil disposal areas by Federal licensees or permittees.

In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Limitations and monitoring requirements of certification.

Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 1311 or 1312 of this title, standard of performance under section 1316 of this title, or prohibition, effluent standard, or pretreatment standard under section 1317 of this title, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section. (June 30, 1948, ch. 758, title IV, § 401, as added Oct. 18, 1972, Pub. L 92–500, § 2, 86 Stat. 877.)

ADMINISTRATION OF REFUSE ACT PERMIT PROGRAM

Administration of Refuse Act Permit Program to regulate discharge of pollutants and other refuse matter into navigable waters of the United States or their tributaries, see Ex. Ord. No. 11574, Dec. 23, 1970, 35 F.R. 19627, set out as a note under section 407 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1314, 1365, 1371 of this title.

§ 1342. National pollutant discharge elimination system.

(a) Permits for discharge of pollutants.

(1) Except as provided in sections 1328 and 1344 of this title, the Administrator may, after opportunity for public hearing issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a) of this title, upon condition that such discharge will meet either all applicable requirements under sections 1311, 1312, 1316, 1317, 1318, and 1343 of this title, or prior to the

taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this chapter.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 407 of this title shall be deemed to be permits issued under this subchapter, and permits issued under this subchapter shall be deemed to be permits issued under section 407 of this title, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this chapter.

(5) No permit for a discharge into the navigable waters shall be issued under section 407 of this title after October 18, 1972. Each application for a permit under section 407 of this title, pending on October 18, 1972, shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objectives of this chapter to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on October 18, 1972, and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 1314(h)(2) of this title, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out of the provisions of this chapter. No such permit shall issue if the Administrator objects to such issuance.

(b) State permit programs.

At any time after the promulgation of the guidelines required by subsection (h)(2) of section 1314 of this title, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administration a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 1311, 1312, 1316, 1317, and 1343 of this title;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) control the disposal of pollutants into wells;

(2)(A) To issue permits which apply, and insure compliance with, all applicable requirements of section 1318 of this title; or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 1318 of this title;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement;

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 1316 of this title if such source were discharging pollutants, (B) new introductions of pollutants into such works from a source which would be subject to section 1311 of this title

if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 1284(b), 1317, and 1318 of this title.

(c) Suspension of federal program upon submission of State program; withdrawal of approval of State program.

(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 1314(h)(2) of this title. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 1314(h)(2) of this title.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) Notification of Administrator.

(1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(e) Waiver of notification requirement.

In accordance with guidelines promulgated pursuant to subsection (h)(2) of section 1314 of this title, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) Point source categories.

The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Other regulations for safe transportation, handling, carriage, storage, and stowage of pollutants.

Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) Violation of permit conditions; restriction or prohibition upon introduction of pollutant by source not previously utilizing treatment works.

In the event any condition of a permit for discharges from a treatment works (as defined in section 1292 of this title) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Federal enforcement not limited.

Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 1319 of this title.

(j) Public information.

A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with permits.

Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 1319 and 1365 of this title, with sections 1311, 1312, 1316, 1317, and 1343 of this title, except any standard imposed under section 1317 of this title for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 1311, 1316, or 1342 of this title, or (2) section 407 of this title, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant

to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on October 18, 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date which source is not subject to section 407 of this title, the discharge by such source shall not be a violation of this chapter if such a source applies for a permit for discharge pursuant to this section within such 180-day period. (June 30, 1948, ch. 758, title IV, § 402, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 880.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1288, 1311, 1314, 1318, 1319, 1341, 1343, 1345, 1365, 1369, 1371, 1373 of this title.

§ 1343. Ocean discharge criteria.

(a) No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

(b) The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.

(c)(1) The Administrator shall, within one hundred and eighty days after October 18, 1972 (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

(D) the persistence and permanence of the effects of disposal of pollutants;

(E) the effect of the disposal of varying rates, of particular volumes and concentrations of pollutants;

(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 1342 of this title. (June 30, 1948, ch. 758, title IV, § 403, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 883.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1342, 1344 of this title.

§ 1344. Permits for dredged or fill material.

(a) The Secretary of the Army, acting through the Chief of Engineers, may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary of the Army (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary of the Army, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 1343(c) of this title, and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary of the Army. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection. (June 30, 1948, ch 758, title IV, § 404, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 884.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1311, 1328, 1342, 1369 of this title.

§ 1345. Disposal of sewage sludge.

(a) Notwithstanding any other provision of this chapter or of any other law, in any case where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 1292 of this title (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under this section.

(b) The Administrator shall issue regulations governing the issuance of permits for the disposal of sewage sludge subject to this section. Such regulations shall require the application to such disposal of each criterion, factor, procedure, and requirement applicable to a permit issued under section 1342 of this title, as the Administrator determines necessary to carry out the objective of this chapter.

(c) Each State desiring to administer its own permit program for disposal of sewage sludge within its jurisdiction may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this chapter. (June 30, 1948, ch. 758, title IV, § 405, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 884.)

SUBCHAPTER V.—GENERAL PROVISIONS

§ 1361. Administration.

(a) Authority of Administrator to prescribe regulations.

The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.

(b) Utilization of other agency officers and employees.

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this chapter.

(c) Recordkeeping.

Each recipient of financial assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate effective audit.

(d) Audit.

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) Awards for outstanding technological achievement or innovative processes, methods, or devices in waste treatment and pollution abatement programs.

(1) It is the purpose of this subsection to authorize a program which will provide official recognition by the United States Government to those industrial organizations and political subdivisions of States which during the preceding year demonstrated an outstanding technological achievement or an innovative process, method, or device in their waste treatment and pollution abatement programs. The Administrator shall, in consultation with the appropriate State water pollution control agencies, establish regulations under which such recognition may be applied for and granted, except that no applicant shall be eligible for an award under this subsection if such applicant is not in total compliance with all applicable water quality requirements under this chapter, or otherwise does not have a satisfactory record with respect to environmental quality.

(2) The Administrator shall award a certificate or plaque of suitable design to each industrial organization or political subdivision which qualifies for such recognition under regulations established under this subsection.

(3) The President of the United States, the Governor of the appropriate State, the Speaker of the House of Representatives, and the President pro tempore of the Senate shall be noified of the award by the Administrator and the awarding of such recognition shall be published in the Federal Register.

(f) Detail of Environmental Protection Agency personnel to State water pollution control agencies.

Upon the request of a State water pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter. (June 30, 1948, ch. 758, title V, § 501, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 885.)

ENVIRONMENTAL COURT FEASIBILITY STUDY

Section 9 of Pub. L. 92–500 provided that: "The President, acting through the Attorney General, shall make a full and complete investigation and study of the feasibility of establishing a separate court, or court system, having jurisdiction over environmental matters and shall report the results of such investigation and study together with his recommendations to Congress not later than one year after the date of enactment of this Act [Oct. 18, 1972]."

§ 1362. Definitions.

Except as otherwise specifically provided, when used in this chapter:

(1) The term "State water pollution control agency" means the State agency designated by the Governor having responsibility for enforcing State laws relating to the abatement of pollution.

(2) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(4) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 1288 of this title.

(5) The term "person" means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

(6) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. This term does not mean (A) "sewage from vessels" within the meaning of section 1322 of this title; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a

well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(7) The term "navigable waters" means the waters of the United States, including the territorial seas.

(8) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(9) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

(10) The term "ocean" means any portion of the high seas beyond the contiguous zone.

(11) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance.

(12) The term "discharge of a pollutant" and the term "discharge of pollutants" each means (A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

(13) The term "toxic pollutant" means those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available to the Administrator, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(15) The term "biological monitoring" shall mean the determination of the effects on aquatic life, including accumulation of pollutants in tissue, in receiving waters due to the discharge of pollutants (A) by techniques and procedures, including sampling of organisms representative of appropriate levels of the food chain appropriate to the volume and the physical, chemical, and biological characteristics of the effluent, and (B) at appropriate frequencies and locations.

(16) The term "discharge" when used without qualification includes a discharge of a pollutant, and a discharge of pollutants.

(17) The term "schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

(18) The term "industrial user" means those industries identified in the Standard Industrial Classification Manual, Bureau of the Budget, 1967, as amended and supplemented, under the category of "Division D—Manufacturing" and such other classes of significant waste producers as, by regulation, the Administrator deems apropriate.

(19) The term "pollution" means the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water. (June 30, 1948, ch. 758, title V, § 502, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1319 of this title.

§ 1363. Water Pollution Control Advisory Board.

(a)(1) There is hereby established in the Environmental Protection Agency a Water Pollution Control Advisory Board, composed of the Administrator or his designee, who shall be Chairman, and nine members appointed by the President, none of whom shall be Federal officers or employees. The appointed members, having due regard for the purposes of this chapter, shall be selected from among representatives of various State, interstate, and local governmental agencies, of public or private interests contributing to, affected by, or concerned with pollution, and of other public and private agencies, organizations, or groups demonstrating an active interest in the field of pollution prevention and control, as well as other individuals who are expert in this field.

(2)(A) Each member appointed by the President shall hold office for a term of three years, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (ii) the terms of office of the members first taking office after June 30, 1956, shall expire as follows: three at the end of one year after such date, three at the end of two years after such date, and three at the end of three years after such date, as designated by the President at the time of appointment, and (iii) the term of any member under the preceding provisions shall be extended until the date on which his successor's appointment is effective. None of the members appointed by the President shall be eligible for reappointment within one year after the end of his preceding term.

(B) The members of the Board who are not officers or employees of the United States, while attending conferences or meetings of the Board or while serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including travel-time, and while away from their homes or regular places of business they may

be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.

(b) The Board shall advise, consult with, and make recommendations to the Administrator on matters of policy relating to the activities and functions of the Administrator under this chapter.

(c) Such clerical and technical assistance as may be necessary to discharge the duties of the Board shall be provided from the personnel of the Environmental Protection Agency. (June 30, 1948, ch. 758, title V, § 503, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 887.)

REFERENCES IN TEXT

Travel expenses, including per diem in lieu of subsistence as authorized by law, referred to in subsec. (a)(2)(B), has reference to the allowances authorized by section 5703 of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on January 5, 1973, to terminate not later than the expiration of the two-year period following January 5, 1973, unless, in the case of a Board established by the President or an officer of the Federal Government, such Board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Board established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1364. Emergency powers.

Notwithstanding any other provision of this chapter, the Administrator upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where such endangerment is to the livelihood of such persons, such as inability to market shellfish, may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to such pollution or to take such other action as may be necessary. (June 30, 1948, ch. 758, title V, § 504, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1256, 1318 of this title.

§ 1365. Citizen suits.

(a) Authorization; jurisdiction.

Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 1319(d) of this title.

(b) Notice.

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 1316 and 1317(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator.

(1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Litigation costs.

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Statutory or common law rights not restricted.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) Effluent standard or limitation.

For purposes of this section, the term "effluent standard or limitation under this chapter" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title, (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under

section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; or (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title).

(g) Citizen.

For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) Civil action by State Governors.

A Governor of a State may commence a civil action under subsection (a) of this section, without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this chapter the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State. (June 30, 1948, ch. 758, title V, § 505, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 888.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1342 of this title.

§ 1366. Appearance.

The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a reasonable time, that he will appear in a civil action, attorneys who are officers or employees of the Environmental Protection Agency shall appear and represent the United States in such action. (June 30, 1948, ch. 758, title V, § 506, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 889.)

§ 1367. Employee protection.

(a) Discrimination against persons filing, instituting, or testifying in proceedings under this chapter prohibited.

No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this chapter, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this chapter.

(b) Application for review; investigation; hearing; review.

Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of Title 5. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator are subject to judicial review under this chapter.

(c) Costs and expenses.

Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees), as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

(d) Deliberate violations by employee acting without direction from his employer or his agent.

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any prohibition of effluent limitation or other limitation under section 1311 or 1312 of this title, standards of performance under section 1316 of this title, effluent standard, prohibition or pretreatment standard under section 1317 of this title, or any other prohibition or limitation established under this chapter.

(e) Investigations of employment reductions.

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the issuance of any effluent limitation or order under this chapter, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such limitation or order. Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under this chapter, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such limitation or order on employment and on any al-

leged discharge, lay-off, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of Title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such effluent limitation or order on employment and on the alleged discharge, lay-off, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator to modify or withdraw any effluent limitation or order issued under this chapter. (June 30, 1948, ch. 758, title V, § 507, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 890.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1369 of this title.

§ 1368. Federal procurement.

(a) Contracts with violators prohibited.

No Federal agency may enter into any contract with any person, who has been convicted of any offense under section 1319(c) of this title, for the procurement of goods, materials, and services if such contract is to be performed at any facility at which the violation which gave rise to such conviction occurred, and if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such conviction has been corrected.

(b) Notification of agencies.

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Implementation by Presidential order.

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's water, the President shall, not more than one hundred and eighty days after October 18, 1972, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions.

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress.

The President shall annually report to the Congress on measures taken in compliance with the purpose and intent of this section, including, but not limited to, the progress and problems associated with such compliance. (June 30, 1948, ch. 758, title V, § 508, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 891.)

ADMINISTRATION OF CHAPTER WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

For provisions concerning the administration of this chapter with respect to Federal contracts, grants, or loans, see Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out as a note under section 1857h–4 of Title 42, The Public Health and Welfare.

§ 1369. Administrative procedure and judicial review.

(a)(1) For purposes of obtaining information under section 1315 of this title, or carrying out section 1367(e) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for effluent data, upon a showing satisfactory to the Administrator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of Title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subsection, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(2) The district courts of the United States are authorized, upon application by the Administrator, to issue subpenas for attendance and testimony of witnesses and the production of relevant papers, books, and documents, for purposes of obtaining information under sections 1314(b) and (c) of this title. Any papers, books, documents, or other information or part thereof, obtained by reason of such a subpena shall be subject to the same requirements as are provided in paragraph (1) of this subsection.

(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, or 1316 of this title, and (F) in issuing or denying any permit under section 1342 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person

resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

(c) In any judicial proceeding brought under subsection (b) of this section in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence. (June 30, 1948, ch. 758, title V, § 509, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 891, and amended Dec. 28, 1973, Pub. L. 93–207, § 1(6), 87 Stat. 906.)

AMENDMENTS

1973—Subsec. (b)(1)(C). Pub. L. 93–207 substituted "pretreatment" for "treatment".

§ 1370. State authority.

Except as expressly provided in this chapter, nothing in this chapter shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution; except that if an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States. (June 30, 1948, ch. 758, title V, § 510, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1311 of this title.

§ 1371. Authority under other laws and regulations.

(a) This chapter shall not be construed as (1) limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with this chapter; (2) affecting or impairing the authority of the Secretary of the Army (A) to maintain navigation or (B) under the Act of March 3, 1899; except that any permit issued under section 1344 of this title shall be conclusive as to the effect on water quality of any discharge resulting from any activity subject to section 403 of this title, or (3) affecting or impairing the provisions of any treaty of the United States.

(b) Discharges of pollutants into the navigable waters subject to the Rivers and Harbors Act of 1910 and the Supervisory Harbors Act of 1888 shall be regulated pursuant to this chapter, and not subject to such Act of 1910 and the Act of 1888 except as to effect on navigation and anchorage.

(c)(1) Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 1281 of this title, and the issuance of a permit under section 1342 of this title for the discharge of any pollutant by a new source as defined in section 1316 of this title, no action of the Administrator taken pursuant to this chapter shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969; and

(2) Nothing in the National Environmental Policy Act of 1969 shall be deemed to—

(A) authorize any Federal agency authorized to license or permit the conduct of any activity which may result in the discharge of a pollutant into the navigable waters to review any effluent limitation or other requirement established pursuant to this chapter or the adequacy of any certification under section 1341 of this title; or

(B) authorize any such agency to impose, as a condition precedent to the issuance of any license or permit, any effluent limitation other than any such limitation established pursuant to this chapter.

(d) Notwithstanding this chapter or any other provision of law, the Administrator (1) shall not require any State to consider in the development of the ranking in order of priority of needs for the construction of treatment works (as defined in subchapter II of this chapter), any water pollution control agreement which may have been entered into between the United States and any other nation, and (2) shall not consider any such agreement in the approval of any such priority ranking. (June 30, 1948, ch. 758, title V, § 511, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 893, and amended Jan. 2, 1974, Pub. L. 93–243, § 3, 87 Stat. 1069.)

REFERENCES IN TEXT

The Act of March 3, 1899, referred to in subsec. (a), is classified to section 401 et seq. of this title.

The Rivers and Harbors Act of 1910 and the Supervisory Harbors Act of 1888, referred to in subsec. (b), are classi-

fied, respectively, to section 421 and sections 441 to 451b of this title.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is classified to section 4321 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1974—Subsec. (d). Pub. L. 93-243 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1341 of this title.

§ 1372. Labor standards.

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on treatment works for which grants are made under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the immediate locality, as determined by the Secretary of Labor, in accordance with the Davis-Bacon Act. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 276c of Title 40. (June 30, 1948, ch. 758, title V, § 513, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in text, is classified to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

§ 1373. Public health agency coordination.

The permitting agency under section 1342 of this title shall assist the applicant for a permit under such section in coordinating the requirements of this chapter with those of the appropriate public health agencies. (June 30, 1948, ch. 758, title V, § 514, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

§ 1374. Effluent Standards and Water Quality Information Adivsory Committee.

(a) Establishment; membership; term.

(1) There is established on [1] Effluent Standards and Water Quality Information Advisory Committee, which shall be composed of a Chairman and eight members who shall be appointed by the Administrator within sixty days after October 18, 1972.

(2) All members of the Committee shall be selected from the scientific community, qualified by education, training, and experience to provide, assess, and evaluate scientific and technical information on effluent standards and limitations.

(3) Members of the Committee shall serve for a term of four years, and may be reappointed.

(b) Action on proposed regulations.

(1) No later than one hundred and eighty days prior to the date on which the Administrator is required to publish any proposed regulations required by section 1314(b) of this title, any proposed standard of performance for new sources required by section 1316 of this title, or any proposed toxic effluent standard required by section 1317 of this title, he shall transmit to the Committee a notice of intent to propose such regulations. The Chairman of the Committee within ten days after receipt of such notice may publish a notice of a public hearing by the Committee, to be held within thirty days.

(2) No later than one hundred and twenty days after receipt of such notice, the Committee shall transmit to the Administrator such scientific and technical information as is in its possession, including that presented at any public hearing, related to the subject matter contained in such notice.

(3) Information so transmitted to the Administrator shall constitute a part of the administrative record and comments on any proposed regulations or standards as information to be considered with other comments and information in making any final determinations.

(4) In preparing information for transmittal, the Committee shall avail itself of the technical and scientific services of any Federal agency, including the United States Geological Survey and any national environmental laboratories which may be established.

(c) Secretary; legal counsel; compensation.

(1) The Committee shall appoint and prescribe the duties of a Secretary, and such legal counsel as it deems necessary. The Committee shall appoint such other employees as it deems necessary to exercise and fulfill its powers and responsibilities. The compensation of all employees appointed by the Committee shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of Title 5.

(2) Members of the Committee shall be entitled to receive compensation at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of Title 5.

(d) Quorum; special panel.

Five members of the Committee shall constitute a quorum, and official actions of the Committee shall be taken only on the affirmative vote of at least five members. A special panel composed of one or more members upon order of the Committee shall conduct any hearing authorized by this section and submit the transcript of such hearing to the entire Committee for its action thereon.

(e) Rules.

The Committee is authorized to make such rules as are necessary for the orderly transaction of its business. (June 30, 1948, ch. 758, title V, § 515, as added Oct. 18, 1972, Pub. L. 92-500, § 2, 86 Stat. 894.)

§ 1375. Reports to Congress.

(a) Within ninety days following the convening of each session of Congress, the Administrator shall submit to the Congress a report, in addition to any other report required by this chapter, on measures taken toward implementing the objective of this chapter, including, but not limited to, (1) the progress and problems associated with developing comprehensive plans under section 1252 of this title, areawide plans under section 1288 of this title, basin plans under section 1289 of this title, and plans under section 1313(e) of this title; (2) a summary of actions taken and results achieved in the field of water pollution control research, experiments,

[1] So in original.

studies, and related matters by the Administrator and other Federal agencies and by other persons and agencies under Federal grants or contracts; (3) the progress and problems associated with the development of effluent limitations and recommended control techniques; (4) the status of State programs, including a detailed summary of the progress obtained as compared to that planned under State program plans for development and enforcement of water quality requirements; (5) the identification and status of enforcement actions pending or completed under this chapter during the preceding year; (6) the status of State, interstate, and local pollution control programs established pursuant to, and assisted by, this chapter; (7) a summary of the results of the survey required to be taken under section 1290 of this title; (8) his activities including recommendations under sections 1259 through 1261 of this title; and (9) all reports and recommendations made by the Water Pollution Control Advisory Board.

(b)(1) The Administrator, in cooperation with the States, including water pollution control agencies and other water pollution control planning agencies, shall make (A) a detailed estimate of the cost of carrying out the provisions of this chapter; (B) a detailed estimate, biennially revised, of the cost of construction of all needed publicly owned treatment works in all of the States and of the cost of construction of all needed publicly owned treatment works in each of the States; (C) a comprehensive study of the economic impact on affected units of government of the cost of installation of treatment facilities; and (D) a comprehensive analysis of the national requirements for and the cost of treating municipal, industrial, and other effluent to attain the water quality objectives as established by this chapter or applicable State law. The Administrator shall submit such detailed estimate and such comprehensive study of such cost to the Congress no later than February 10 of each odd-numbered year. Whenever the Administrator, pursuant to this subsection, requests and receives an estimate of cost from a State, he shall furnish copies of such estimate together with such detailed estimate to Congress.

(2) Notwithstanding the second sentence of paragraph (1) of this subsection, the Administrator shall make a preliminary detailed estimate called for by subparagraph (B) of such paragraph and shall submit such preliminary detailed estimate to the Congress no later than September 3, 1974. The Administrator shall require each State to prepare an estimate of cost for such State, and shall utilize the survey form EPA–1, O.M.B. No. 158–R0017, prepared for the 1973 detailed estimate, except that such estimate shall include all costs of compliance with section 1281(g)(2)(A) of this title and water quality standards established pursuant to section 1313 of this title, and all costs of treatment works as defined in section 1292(2) of this title, including all eligible costs of constructing sewage collection systems and correcting excessive infiltration or inflow and all eligible costs of correcting combined storm and sanitary sewer problems and treating storm water flows. The survey form shall be distributed by the Administrator to each State no later than January 31, 1974. (June 30, 1948, ch. 758, title V, § 516, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 895, and amended Jan. 2, 1974, Pub. L. 93–243, § 4, 87 Stat. 1069.)

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–243 designated existing paragraph as par. (1) and cls. (1) to (4) as (A) to (D), and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1254, 1285, 1290 of this title.

§ 1376. Authorization of appropriations.

There are authorized to be appropriated to carry out this chapter, other than sections 1254, 1255, 1256(a), 1257, 1258, 1262, 1263, 1264, 1265, 1286, 1287, 1288 (f) and (h), 1289, 1314, 1321 (c), (d), (l), (l), and (k), 1324, 1325, and 1327 of this title, $250,000,000 for the fiscal year ending June 30, 1973, $300,000,000 for the fiscal year ending June 30, 1974, and $350,000,000 for the fiscal year ending June 30, 1975. (June 30, 1948, ch. 758, title V, § 517, as added Oct. 18, 1972, Pub. L. 92–500, § 2, 86 Stat. 896.)

Chapter 27.—OCEAN DUMPING [NEW]

Sec.
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1441. Monitoring and research program; reports to Congress.
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(a) Secretary of Commerce.
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(e) Utilization of personnel, services, and facilities; inter-agency agreements.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1503 of this title.

§ 1401. Congressional finding, policy and declaration of purpose.

(a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) It is the purpose of this chapter to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States, if the dumping occurs in the territorial sea or the contiguous zone of the United States. (Pub. L. 92–532, § 2, Oct. 23, 1972, 86 Stat. 1052, amended Pub. L. 93–254, § 1(1), Mar. 22, 1974, 88 Stat. 50.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92–532, which enacted this chapter and chapter 32 of Title 16, Conservation.

AMENDMENTS

1974—Subsec. (b). Pub. L. 93–254 deleted statement of the purpose of this chapter as being the regulation of transportation of material from the United States for dumping into ocean waters, and the dumping of material, transported from outside the United States, if the dumping occurs in ocean waters over which the United States has jurisdiction or over which it may exercise control, under accepted principles of international law, in order to protect its territory or territorial sea, now covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 93–254 added subsec. (c).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93–254 provided in part that amendment of subsecs. (b) and (c) of this section and sections 1402, 1411, and 1412(a), other than last sentence of subsec. (a), of this title, by Pub. L. 93–254 shall become effective Mar. 22, 1974.

SHORT TITLE

Section 1 of Pub. L. 92–532 provided: "That this Act [enacting this chapter and chapter 32 of Title 16, Conservation] may be cited as the 'Marine Protection, Research, and Sanctuaries Act of 1972'."

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION AT FEDERAL FACILITIES

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of Title 42, The Public Health and Welfare, provides for the prevention, control, and abatement of environmental pollution at federal facilities.

§ 1402. Definitions.

For the purposes of this chapter the term—

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: *Provided*, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended, under the provisions of section 407 of this title, or under the provisions of the Atomic Energy Act of 1954, as amended, nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: *Provided further*, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: *And Provided further*, That it does not include the deposit

of oyster shells, or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

(*l*) "Convention" means the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

(Pub. L. 92–532, § 3, Oct. 23, 1972, 86 Stat. 1052, amended Pub. L. 93–254, § 1(2), Mar. 22, 1974, 88 Stat. 50.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92–532, which enacted this chapter and chapter 32 of Title 16, Conservation.

The Federal Water Pollution Control Act, referred to in subsec. (f), is classified to section 1251 et seq. of this title.

The Atomic Energy Act of 1954, referred to in subsec. (f), is classified to section 2011 et seq. of Title 42, The Public Health and Welfare.

AMENDMENTS

1974—Subsec. (c). Pub. L. 93–254, § 1(2)(A), substituted "sewage from vessels within the meaning of section 1322 of this title. Oil within the meaning of section 1321 of this title shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping." for "oil within the meaning of section 11 of the Federal Water Pollution Control Act and does not mean sewage from vessels within the meaning of section 13 of such Act."

Subsec. (*l*). Pub. L. 93–254, § 1(2)(C), added subsec. (*l*).

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–254 effective Mar. 22, 1974, see section 2 of Pub. L. 93–254, set out in part under section 1401 of this title.

SUBCHAPTER I.—REGULATION

§ 1411. Prohibited acts.

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title,

(1) no person shall transport from the United States, and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location

any material for the purpose of dumping it into ocean waters.

(b) Except as may be authorized by a permit issued pursuant to section 1412 of this title, and subject to regulations issued pursuant to section 1418 of this title, no person shall dump any material transported from a location outside the United States (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States. (Pub. L. 92–532, title I, § 101, Oct. 23, 1972, 86 Stat. 1053, amended Pub. L. 93–254, § 1(3), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–254 incorporated existing provisions in the introductory text, substituting reference to permits issued under section 1412 or section 1413 of this title for prior reference to such issuance under this subchapter; incorporated existing provisions in item designated (1); added item (2); and substituted prohibition against transportation of any material for ocean dumping for former prohibition against such dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (b). Pub. L. 93–254 substituted reference to permits issued under section 1412 of this title for former reference to such issuance under this subchapter, made any ocean dumping subject to regulations issued under section 1418 of this title, and substituted prohibition against dumping of any material for former prohibition against dumping of any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or any other material.

Subsec. (c). Pub. L. 93–254 deleted subsec. (c) which prohibited any officer, employee, agent, department, agency, or instrumentality of the United States from transporting from any location outside the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit, any other material for purpose of dumping in ocean waters, now covered in subsec. (b) of this section.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–254 effective Mar. 22, 1974, see section 2 of Pub. L. 93–254, set out in part under section 1401 of this title.

EFFECTIVE DATE

Section 110(a) of Pub. L. 92–532 provided that: "This title [this subchapter] shall take effect six months after the date of the enactment of this Act [Oct. 23, 1972]."

SAVINGS PROVISION

Section 110(b) of Pub. L. 92–532 provided that: "No legal action begun, or right of action accrued, prior to the effective date of this title [this subchapter] shall be affected by any provision of this title [this subchapter]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title.

§ 1412. Dumping permit program.

(a) Environmental Protection Agency permits.

Except in relation to dredged material, as provided for in section 1413 of this title, and in relation to radiological, chemical, and biological warfare

agents and high-level radioactive waste, for which no permit may be issued, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, or in the case of a vessel or aircraft registered in the United States or flying the United States flag, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 1411(b) of this title, where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities. The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

(A) The need for the proposed dumping.

(B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.

(C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.

(D) The effect of such dumping on marine ecosystems, particularly with respect to—

(i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes.

(ii) potential changes in marine ecosystem diversity, productivity, and stability, and

(iii) species and community population dynamics.

(E) The persistence and permanence of the effects of the dumping.

(F) The effect of dumping particular volumes and concentrations of such materials.

(G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.

(H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.

(I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards. To the extent that he may do so without relaxing the requirements of this subchapter, the Administrator, in establishing or revising such criteria, shall apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

(b) Permit categories.

The Administrator may establish and issue various categories of permits, including the general permits described in section 1414(c) of this title.

(c) Sites and times for dumping.

The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) Fish wastes.

No permit is required under this subchapter for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

(e) Foreign State permits; acceptance.

In the case of transportation of material, by a vessel or aircraft registered in the United States or flying the United States flag, from a location in a foreign State Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements, and which otherwise could have been issued purusant to subsection (a) of this section, shall be accepted, for the purposes of this subchapter, as if it were issued by the Administrator under the authority of this section. (Pub. L. 92–532, title I, § 102, Oct. 23, 1972, 86 Stat. 1054, amended Pub. L. 93–254, § 1(4), Mar. 22, 1974, 88 Stat. 51.)

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–254, § 1(4)(A), substituted "for which no permit may be issued," for "as provided for in section 1411 of this title," inserted "or in the case of a vessel or aircraft registered in the United States or flying the United States flag," after "instrumentality of the United States," and required the Administrator to apply the standards and criteria binding upon the United States under the Convention, including its Annexes.

Subsec. (e). Pub. L. 93–254, § 1(4)(B), added subsec. (e).

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2 of Pub. L. 93–254 provided in part that: "The amendments made by subparagraph 1(4)(A)(iii) and paragraph 1(4)(B) of this Act [enacting provision of subsec. (a) respecting application of standards by Administrator and subsec. (e) of this section] shall become effective on the date that the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters enters into force for the United States."

Amendment of subsec. (a) of this section, other than last sentence, by Pub. L. 93–254 effective Mar. 22, 1974, see section 2 of Pub. L. 93–254, set out in part under section 1401 of this title.

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1413 to 1415 of this title.

§ 1413. Dumping permit program for dredged material.

(a) Issuance by Secretary of the Army.

Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) Independent determination of need for dumping, other methods of disposal, and appropriate locations.

In making the determination required by subsection (a) of this section, the Secretary shall apply those criteria, established pursuant to section 1412 (a) of this title, relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 1412(c) of this title.

(c) Disagreement of Administrator with determination of Secretary of the Army.

Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of the dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d) of this section, the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) Waiver of requirements.

If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 1412(a) of this title relating to the effects of dumping or with the restrictions established pursuant to section 1412(c) of this title relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) Federal projects involving dredged material.

In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section. (Pub. L. 92–532, title I, § 103, Oct. 23, 1972, 86 Stat. 1055.)

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1412, 1414, 1415 of this title.

§ 1414. Permit conditions.

(a) Designated and included conditions.

Permits issued under this subchapter shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) Permit processing fees; reporting requirements.

The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this subchapter as he deems appropriate.

(c) General permits.

Consistent with the requirements of sections 1412 and 1413 of this title, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Review.

Any permit issued under this subchapter shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may

alter or revoke partially or entirely the terms of permits issued by him under this subchapter, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) Information for review and evaluation of applications.

The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this subchapter to provide such information as he may consider necessary to review and evaluate such application.

(f) Public information.

Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this subchapter shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) Display of issued permits.

A copy of any permit issued under this subchapter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee. (Pub. L 92–532, title I, § 104, Oct. 23, 1972, 86 Stat. 1056.)

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1412 of this title.

§ 1415. Penalties.

(a) Assessment of civil penalty by Administrator; remission or mitigation; court action for appropriate relief.

Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than $50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) Criminal penalties.

In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this subchapter, regulations promulgated under this subchapter, or a permit issued under this subchapter shall be fined not more than $50,000, or imprisoned for not more than one year, or both.

(c) Separate offenses.

For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) Injunctive relief.

The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this subchapter, of regulations promulgated under this subchapter, or of permits issued under this subchapter, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) Liability of vessels in rem.

A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended, used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) Revocation and suspension of permits.

If the provisions of any permit issued under section 1412 or 1413 of this title are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) Civil suits by private persons.

(1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this subchapter. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the

Secretary, and to any alleged violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this subchapter.

(3)(A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) Emergencies.

No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe. (Pub. L. 92–532, title I, § 105, Oct. 23, 1972, 86 Stat. 1057.)

REFERENCES IN TEXT

Section 13 of the Water Pollution Control Act, referred to in subsec. (e), is now covered by section 1322 of this title.

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1416. Voiding of pre-existing licenses; impairment of navigation; consistent State programs; existing conservation program not affected.

(a) After the effective date of this subchapter, all licenses, permits, and authorizations other than those issued pursuant to this subchapter shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this subchapter, and whether issued before or after the effective date of this subchapter.

(b) The provisions of subsection (a) of this section shall not apply to actions taken before the effective date of this subchapter under the authority of the Rivers and Harbors Act of 1899, as amended.

(c) Prior to issuing any permit under this subchapter, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) After the effective date of this subchapter, no State shall adopt or enforce any rule or regulation relating to any activity regulated by this subchapter. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this subchapter, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

(e) Nothing in this subchapter shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended. (Pub. L. 92–532, title I, § 106, Oct. 23, 1972, 86 Stat. 1058.)

REFERENCE IN TEXT

For the effective date of this subchapter, referred to in subsecs. (a), (b), and (d), see Effective Date note hereunder.

The Rivers and Harbors Act of 1899, referred to in subsec. (b), is classified to section 401 et seq. of this title.

The Fish and Wildlife Coordination Act, referred to in subsec. (e), is classified to section 661 et seq. of Title 16, Conservation.

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1417. Enforcement.

(a) Utilization of other departments, agencies, and instrumentalities.

The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this subchapter.

(b) Delegation of review and evaluation authority.

The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such

responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) Surveillance and other enforcement activity.

The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 1418 of this title, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the Department in which the Coast Guard is operating shall supply to the Administrator and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this subchapter. (Pub. L. 92–532, title I, § 107, Oct. 23, 1972, 86 Stat. 1059.)

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1418. Regulations.

In carrying out the responsibilites and authority conferred by this subchapter, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate. (Pub. L. 92–532, title I, § 108, Oct. 23, 1972, 86 Stat. 1059.)

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1417 of this title.

§ 1419. International cooperation.

The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose, formulate, present, or support specific proposals in the United Nations and other component international organizations for the development of appropriate international rules and regulations in support of the policy of this chapter. (Pub. L. 92–532, title I, § 109, Oct. 23, 1972, 86 Stat. 1060.)

REFERENCES IN TEXT

This "chapter", referred to in text, was in the original this "Act" meaning Pub. L. 92–532, which enacted this chapter and chapter 32 of Title 16, Conservation.

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1420. Authorization of appropriations.

There are hereby authorized to be appropriated not to exceed $3,600,000 for fiscal year 1973, not to exceed $5,500,000 for each of the fiscal years 1974 and 1975, not to exceed $5,300,000 for fiscal year 1976, and not to exceed $1,325,000 for the transition period (July 1 through September 30, 1976), for the purposes and administration of this subchapter, and for succeeding fiscal years only such sum as the Congress may authorize by law. (Pub. L. 92–532, title I, § 111, Oct. 23, 1972, 86 Stat. 1060, amended Pub. L. 93–472, Oct. 26, 1974, 88 Stat. 1430; Pub. L. 94–62, § 1, July 25, 1975, 89 Stat. 303.)

AMENDMENTS

1975—Pub. L. 94–62 substituted "not to exceed $5,500,000 for each of the fiscal years 1974 and 1975" for "and not to exceed $5,500,000 for fiscal years 1974 and 1975", and added provisions authorizing appropriation of an amount not to exceed $5,300,000 for fiscal year 1976, and not to exceed $1,325,000 for the transition period (July 1 through Sept. 30, 1976).

1974—Pub. L. 93–472 substituted "fiscal years 1974 and 1975," for "fiscal year 1974,".

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

§ 1421. Annual report to Congress.

The Administrator shall report annually, on or before June 30 of each year, with the first report to be made on or before June 30, 1973 to the Congress, on his administration of this subchapter, including recommendations for additional legislation if deemed necessary. (Pub. L. 92–532, title I, § 112, Oct. 23, 1972, 86 Stat. 1060.)

EFFECTIVE DATE

Section effective six months after Oct. 23, 1972, see section 110(a) of Pub. L. 92–532, set out as a note under section 1411 of this title.

SUBCHAPTER II.—RESEARCH

§ 1441. Monitoring and research program; reports to Congress.

The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall report from time to time, not less frequently than annually, his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress. (Pub. L. 92–532, title II, § 201, Oct. 23, 1972, 86 Stat. 1060.)

§ 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems.

(a) Secretary of Commerce.

The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of October 23, 1972, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In

carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.

(b) Action with other nations.

In carrying out his responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.

(c) Annual report to Congress.

In March of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year.

(d) Cooperation of other departments, agencies, and independent instrumentalities.

Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.

(e) Utilization of personnel, services, and facilities; inter-agency agreements.

The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action. (Pub. L. 92–532, title II, § 202, Oct. 23, 1972, 86 Stat. 1060, amended Pub. L. 94–62, § 2, July 25, 1975, 89 Stat. 303.)

AMENDMENTS

1975—Subsec. (c). Pub. L. 94–62 substituted "March" for "January".

§ 1443. Cooperation with public authorities, agencies, and institutions, private agencies and institutions, and individuals.

The Secretary of Commerce shall conduct and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of minimizing or ending all dumping of materials within five years of the effective date of this Act. (Pub. L. 92–532, title II, § 203, Oct. 23, 1972, 86 Stat. 1061.)

REFERENCES IN TEXT

The effective date of this Act, referred to in text, probably means Oct. 23, 1972, the date of enactment of Pub. L. 92–532, which enacted this chapter.

§ 1444. Authorization of appropriations.

There are authorized to be appropriated for the first fiscal year after October 23, 1972, and for the next two fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any such fiscal year may not exceed $6,000,000. There are authorized to be appropriated not to exceed $1,500,000 for the transition period (July 1 through September 30, 1976). (Pub. L. 92–532; title II, § 204, Oct. 23, 1972, 86 Stat. 1061, amended Pub. L. 94–62, § 3, July 25, 1975, 89 Stat. 303.)

AMENDMENTS

1975—Pub. L. 94–62 added provision authorizing the appropriation of an amount not to exceed $1,500,000 for the transition period (July 1, through Sept. 30, 1976).

Chapter 28.—OIL POLLUTION CASUALTIES ON THE HIGH SEAS: UNITED STATES INTERVENTION [NEW]

Sec.
1471. Definitions.
1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.
1473. Same; list of Federal interests directly threatened or affected.
1474. Federal intervention actions.
1475. Consultation procedure.
1476. Emergencies.
1477. Reasonable measures; considerations.
1478. Personal, flag state, and foreign state considerations.
1479. Federal liability for unreasonable damages; jurisdiction.
1480. Notification by Secretary of State.
1481. Violations; penalties.
1482. Experts and arbitrators; nomination.
1483. Foreign Government ships; immunity.
1484. Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected.
1485. Rules and regulations.
1486. Revolving fund for Federal actions and activities.
1487. Effective date.

§ 1471. Definitions.

As used in this chapter—

(1) "ship" means—

(A) any seagoing vessel of any type whatsoever, and

(B) any floating craft, except an installation or device engaged in the exploration and exploitation of the resources of the seabed and the ocean floor and the subsoil thereof;

(2) "oil" means crude oil, fuel oil, diesel oil, and lubricating oil;

(3) "convention" means the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;

(4) "Secretary" means the Secretary of the department in which the Coast Guard is operating; and

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa,

the Virgin Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 93–248, § 2, Feb. 5, 1974, 88 Stat. 8.)

SHORT TITLE

Section 1 of Pub. L. 93–248 provided: "That this Act [which enacted this chapter] may be cited as the 'Intervention on the High Seas Act'."

§ 1472. Grave and imminent danger from oil pollution casualties to coastline or related interests of United States; Federal nonliability for Federal preventive measures on the high seas.

Whenever a ship collision, stranding, or other incident of navigation or other occurrence on board a ship or external to it resulting in material damage or imminent threat of material damage to the ship or her cargo creates, as determined by the Secretary, a grave and imminent danger to the coastline or related interests of the United States from pollution or threat of pollution of the sea by oil which may reasonably be expected to result in major harmful consequences, the Secretary may, except as provided for in section 1479 of this title, without liability for any damage to the owners or operators of the ship, to her cargo or crew, or to underwriters or other parties interested therein, take measures on the high seas, in accordance with the provisions of the Convention and this chapter, to prevent, mitigate, or eliminate that danger. (Pub. L. 93–248, § 3, Feb. 5, 1974, 88 Stat. 8.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1474, 1479 of this title.

§ 1473. Same; list of Federal interests directly threatened or affected.

In determining whether there is grave and imminent danger of major harmful consequences to the coastline or related interests of the United States, the Secretary shall consider the interests of the United States directly threatened or affected including but not limited to, fish, shellfish, and other living marine resources, wildlife, coastal zone and estuarine activities, and public and private shorelines and beaches. (Pub. L. 93–248, § 4, Feb. 5, 1974, 88 Stat. 9.)

§ 1474. Federal intervention actions.

Upon a determination under section 1472 of this title of a grave and imminent danger to the coastline or related interests of the United States, the Secretary may—

(1) coordinate and direct all public and private efforts directed at the removal or elimination of the threatened pollution damage;

(2) directly or indirectly undertake the whole or any part of any salvage or other action he could require or direct under subsection (1) of this section; and

(3) remove, and, if necessary, destroy the ship and cargo which is the source of the danger.

(Pub. L. 93–248, § 5, Feb. 5, 1974, 88 Stat. 9.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1475, 1486 of this title.

§ 1475. Consultation procedure.

Before taking any measure under section 1474 of this title, the Secretary shall—

(1) consult, through the Secretary of State, with other countries affected by the marine casualty, and particularly with the flag country of any ship involved;

(2) notify without delay the Administrator of the Environmental Protection Agency and any other persons known to the Secretary, or of whom he later becomes aware, who have interests which can reasonably be expected to be affected by any proposed measures; and

(3) consider any views submitted in response to the consultation or notification required by subsections (1) and (2) of this section.

(Pub. L. 93–248, § 6, Feb. 5, 1974, 88 Stat. 9.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1476 of this title.

§ 1476. Emergencies.

In cases of extreme urgency requiring measures to be taken immediately, the Secretary may take those measures rendered necessary by the urgency of the situation without the prior consultation or notification as required by section 1475 of this title or without the continuation of consultations already begun. (Pub. L. 92–248, § 7, Feb. 5, 1974, 88 Stat. 9.)

§ 1477. Reasonable measures; considerations.

(a) Measures directed or conducted under this chapter shall be proportionate to the damage, actual or threatened, to the coastline or related interests of the United States and may not go beyond what is reasonably necessary to prevent, mitigate, or eliminate that damage.

(b) In considering whether measures are proportionate to the damage the Secretary shall, among other things, consider—

(1) the extent and probability of imminent damage if those measures are not taken;

(2) the likelihood of effectiveness of those measures; and

(3) the extent of the damage which may be caused by those measures.

(Pub. L. 93–248, § 8, Feb. 5, 1974, 88 Stat. 9.)

§ 1478. Personal, flag state, and foreign state considerations.

In the direction and conduct of measures under this chapter the Secretary shall use his best endeavors to—

(1) assure the avoidance of risk to human life;

(2) render all possible aid to distressed persons, including facilitating repatriation of ships' crews; and

(3) not unnecessarily interfere with rights and interests of others, including the flag state of any ship involved, other foreign states threatened by damage, and persons otherwise concerned.

(Pub. L. 93–248, § 9, Feb. 5, 1974, 88 Stat. 9.)

§ 1479. Federal liability for unreasonable damages; jurisdiction.

(a) The United States shall be obliged to pay compensation to the extent of the damage caused by

measures which exceed those reasonably necessary to achieve the end mentioned in section 1472 of this title.

(b) Actions against the United States seeking compensation for any excessive measures may be brought in the United States Court of Claims, in any district court of the United States, and in those courts enumerated in section 460 of Title 28. For purposes of this chapter, American Samoa shall be included within the judicial district of the District Court of the United States for the District of Hawaii, and the Trust Territory of the Pacific Islands shall be included within the judicial districts of both the District Court of the United States for the District of Hawaii and the District Court of Guam. (Pub. L. 93–248, § 10, Feb. 5, 1974, 88 Stat. 10.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1472 of this title.

§ 1480. Notification by Secretary of State.

The Secretary of State shall notify without delay foreign states concerned, the Secretary-General of the Inter-Governmental Maritime Consultative Organization, and persons affected by measures taken under this chapter. (Pub. L. 93–248, § 11, Feb. 5, 1974, 88 Stat. 10.)

§ 1481. Violations; penalties.

(a) Any person who—

(1) willfully violates a provision of this chapter or a regulation issued thereunder; or

(2) willfully refuses or fails to comply with any lawful order or direction given pursuant to this chapter; or

(3) willfully obstructs any person who is acting in compliance with an order or direction under this chapter, shall be fined not more than $10,000 or imprisoned not more than one year, or both.

(b) In a criminal proceeding for an offense under paragraph (1) or (2) of subsection (a) of this section it shall be a defense for the accused to prove that he used all due diligence to comply with any order or direction that he had reasonable cause to believe that compliance would have resulted in serious risk to human life. (Pub. L. 93–248, § 12, Feb. 5, 1974, 88 Stat. 10.)

§ 1482. Experts and arbitrators; nomination.

(a) The Secretary, in consultation with the Secretary of State and the Administrator of the Environmental Protection Agency, may nominate individuals to the list of experts provided for in article III of the convention.

(b) The Secretary of State, in consultation with the Secretary, shall designate or nominate, as appropriate and necessary, the negotiators, conciliators, or arbitrators provided for by the convention and the annexes thereto. (Pub. L. 93–248, § 13, Feb. 5, 1974, 88 Stat. 10.)

§ 1483. Foreign Government ships; immunity.

No measures may be taken under authority of this chapter against any warship or other ship owned or operated by a country and used, for the time being, only on Government noncommercial service. (Pub. L. 93–248, § 14, Feb. 5, 1974, 88 Stat. 10.)

§ 1484. Interpretation and administration; other right, duty, privilege, or immunity and other remedy unaffected.

This chapter shall be interpreted and administered in a manner consistent with the convention and other international law. Except as specifically provided, nothing in this chapter may be interpreted to prejudice any otherwise applicable right, duty, privilege, or immunity or deprive any country or person of any remedy otherwise applicable. (Pub. L. 93–248, § 15, Feb. 5, 1974, 88 Stat. 10.)

§ 1485. Rules and regulations.

The Secretary may issue reasonable rules and regulations which he considers appropriate and necessary for the effective implementation of this chapter. (Pub. L. 93–248, § 16, Feb. 5, 1974, 88 Stat. 10.)

§ 1486. Revolving fund for Federal actions and activities.

The revolving fund established under section 1321 (k) of this title shall be available to the Secretary for Federal actions and activities under section 1474 of this title. (Pub. L. 93–248, § 17, Feb. 5, 1974, 88 Stat. 10.)

§ 1487. Effective date.

This chapter shall be effective upon February 5, 1974, or upon the date the convention becomes effective as to the United States, whichever is later. (Pub. L. 93–248, § 18, Feb. 5, 1974, 88 Stat. 10.)

Chapter 29.—DEEPWATER PORTS [NEW]

Sec.

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§ 1501. Congressional declaration of policy.

(a) It is declared to be the purposes of the Congress in this chapter to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this chapter shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf. (Pub. L. 93–627, § 2, Jan. 3, 1975, 88 Stat. 2126.)

SHORT TITLE

Section 1 of Pub. L. 93–627 provided: "That this Act [which enacted this chapter and amended section 1333 (a)(2) of Title 43, Public Lands] may be cited as the 'Deepwater Port Act of 1974'."

§ 1502. Definitions.

As used in this chapter, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 1508(a)(2) of this title;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 1504(c)(2)(A) or (B) of this title;

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act, and sections 73 and 74 of the Act of August 27, 1894, as amended;

(4) "application" means any application submitted under this chapter (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder) [1] and the adjacent shorelines including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to determine the policy, business practices, or decisionmaking process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwise;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the loading or unloading and further handling of oil for transportation to any State, except as otherwise provided in section 1522 of this title. The term includes all associated components and equipment, including pipelines, pumping stations, service platforms, mooring buoys, and

[1] So in original. The closing parenthesis probably should appear only at the end of the sentence.

similar appurtenances to the extent they are located seaward of the high water mark. A deepwater port shall be considered a "new source" for purposes of the Clean Air Act, as amended, and the Federal Water Pollution Control Act, as amended;

(11) "Governor" means the Governor of a State or the person designated by State law to exercise the powers granted to the Governor pursuant to this chapter;

(12) "licensee" means a citizen of the United States holding a valid license for the ownership, construction, and operation of a deepwater port that was issued, transferred, or renewed pursuant to this chapter;

(13) "marine environment" includes the coastal environment, waters of the contiguous zone, and waters of the high seas; the fish, wildlife, and other living resources of such waters; and the recreational and scenic values of such waters and resources;

(14) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(15) "person" includes an individual, a public or private corporation, a partnership or other association, or a government entity;

(16) "safety zone" means the safety zone established around a deepwater port as determined by the Secretary in accordance with section 1509(d) of this title;

(17) "Secretary" means the Secretary of Transportation;

(18) "State" includes each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States; and

(19) "vessel" means every description of watercraft or other artificial contrivance used as a means of transportation on or through the water.

(Pub. L. 93–627, § 3, Jan. 3, 1975, 88 Stat. 2127.)

REFERENCES IN TEXT

Act July 2, 1890, as amended, referred to in subd. (3), and popularly known as Sherman Act, is classified to sections 1 to 7 of Title 15, Commerce and Trade.

Act Oct. 15, 1914, as amended, referred to in subd. (3), and popularly known as Clayton Act, is classified generally to chapter 1 (section 12 et seq.) of Title 15.

Federal Trade Commission Act, referred to in subd. (3), is classified to section 41 et seq. of Title 15.

Sections 73 and 74 of act Aug. 27, 1894, referred to in subd. (3), and part of enactment popularly known as Wilson Tariff Act, is classified to sections 8 and 9 of Title 15.

Clean Air Act, as amended, referred to in subd. (10), is classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare.

Federal Water Pollution Control Act, as amended, referred to in subd. (10), is classified to chapter 26 (§ 1251 et seq.) of this title.

§ 1503. License for ownership, construction, and operation of deepwater port.

(a) Requirement; restrictions on utilization of deepwater port.

No person may engage in the ownership, construction, or operation of a deepwater port except in accordance with a license issued pursuant to this chapter. No person may transport or otherwise transfer any oil between a deepwater port and the United States unless such port has been so licensed and the license is in force. A deepwater port, licensed pursuant to the provisions of this chapter, may not be utilized—

(1) for the loading and unloading of commodities or materials (other than oil) transported from the United States, other than materials to be used in the construction, maintenance, or operation of the high seas oil port, to be used as ship supplies, including bunkering for vessels utilizing the high seas oil port,

(2) for the transshipment of commodities or materials, to the United States, other than oil,

(3) except in cases where the Secretary otherwise by rule provides, for the transshipment of oil, destined for locations outside the United States.

(b) Issuance, transfer, amendment, or renewal.

The Secretary is authorized, upon application and in accordance with the provisions of this chapter, to issue, transfer, amend, or renew a license for the ownership, construction, and operation of a deepwater port.

(c) Conditions for issuance.

The Secretary may issue a license in accordance with the provisions of this chapter if—

(1) he determines that the applicant is financially responsible and will meet the requirements of section 1517(*l*) of this title;

(2) he determines that the applicant can and will comply with applicable laws, regulations, and license conditions;

(3) he determines that the construction and operation of the deepwater port will be in the national interest and consistent with national security and other national policy goals and objectives, including energy sufficiency and environmental quality;

(4) he determines that the deepwater port will not unreasonably interfere with international navigation or other reasonable uses of the high seas, as defined by treaty, convention, or customary international law;

(5) he determines, in accordance with the environmental review criteria established pursuant to section 1505 of this title, that the applicant has demonstrated that the deepwater port will be constructed and operated using best available technology, so as to prevent or minimize adverse impact on the marine environment;

(6) he has not been informed, within 45 days of the last public hearing on a proposed license for a designated application area, by the Administrator of the Environmental Protection Agency that the deepwater port will not conform with all applicable provisions of the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, or the Marine Protection, Research and Sanctuaries Act, as amended;

(7) he has received the opinions of the Federal Trade Commission and the Attorney General, pursuant to section 1506 of this title, as to whether issuance of the license would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws;

(8) he has consulted with the Secretary of the Army, the Secretary of State, and the Secretary of Defense, to determine their views on the adequacy of the application, and its effect on programs within their respective jurisdictions;

(9) the Governor of the adjacent coastal State of States, pursuant to section 1508 of this title, approves, or is presumed to approve, issuance of the license; and

(10) the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress, as determined in accordance with section 1508(c) of this title, toward developing, an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972.

(d) Application for license subject to examination and comparison of economic, social, and environmental effects of deepwater port facility and deep draft channel and harbor; finality of determination.

If an application is made under this chapter for a license to construct a deepwater port facility off the coast of a State, and a port of the State which will be directly connected by pipeline with such deepwater port, on the date of such application—

(1) has existing plans for construction of a deep draft channel and harbor; and

(2) has either (A) an active study by the Secretary of the Army relating to the construction of a deep draft channel and harbor, or (B) a pending application for a permit under section 403 of this title for such construction; and

(3) applies to the Secretary for a determination under this section within 30 days of the date of the license application;

the Secretary shall not issue a license under this chapter until he has examined and compared the economic, social, and environmental effects of the construction and operation of the deepwater port with the economic, social and environmental effects of the construction, expansion, deepening, and operation of such State port, and has determined which project best serves the national interest or that both developments are warranted. The Secretary's determination shall be discretionary and nonreviewable.

(e) Additional conditions, removal requirements, waiver; Outer Continental Shelf Lands Act applicable to utilization of components upon waiver of removal requirements.

(1) In issuing a license for the ownership, construction, and operation of a deepwater port, the Secretary shall prescribe any conditions which he deems necessary to carry out the provisions of this chapter, or which are otherwise required by any Federal department or agency pursuant to the terms of this chapter.

(2) No license shall be issued, transferred, or renewed under this chapter unless the licensee or transferee first agrees in writing that (A) there will be no substantial change from the plans, operational systems, and methods, procedures, and safeguards set forth in his application, as approved, without prior approval in writing from the Secretary; and (B) he will comply with any condition the Secretary may prescribe in accordance with the provisions of this chapter.

(3) The Secretary shall establish such bonding requirements or other assurances as he deems necessary to assure that, upon the revocation or termination of a license, the licensee will remove all components of the deepwater port. In the case of components lying in the subsoil below the seabed, the Secretary is authorized to waive the removal requirements if he finds that such removal is not otherwise necessary and that the remaining components do not constitute any threat to navigation or to the environment. At the request of the licensee, the Secretary, after consultation with the Secretary of the Interior, is authorized to waive the removal requirement as to any components which he determines may be utilized in connection with the transportation of oil, natural gas, or other minerals, pursuant to a lease granted under the provisions of the Outer Continental Shelf Lands Act, after which waiver the utilization of such components shall be governed by the terms of the Outer Continental Shelf Lands Act.

(f) Transfer.

Upon application, licenses issued under this chapter may be transferred if the Secretary determines that such transfer is in the public interest and that the transferee meets the requirements of this chapter and the prerequisites to issuance under subsection (c) of this section.

(g) Eligible citizens.

Any citizen of the United States who otherwise qualifies under the terms of this chapter shall be eligible to be issued a license for the ownership, construction, and operation of a deepwater port.

(h) Term and renewal.

Licenses issued under this chapter shall be for a term of not to exceed 20 years. Each licensee shall have a preferential right to renew his license subject to the requirements of subsection (c) of this section, upon such conditions and for such term, not to exceed an additional 10 years upon each renewal, as the Secretary determines to be reasonable and appropriate. (Pub. L. 93–627, § 4, Jan. 3, 1975, 88 Stat. 2128.)

REFERENCES IN TEXT

Clean Air Act, as amended, referred to in subsec. (c)(6), is classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare.

Federal Water Pollution Control Act, as amended, referred to in subsec. (c)(6), is classified to chapter 26 (§ 1251 et seq.) of this title.

Marine Protection, Research, and Sanctuaries Act, as amended, referred to in subsec. (c)(6), is classified to chapter 27 (§ 1401 et seq.) of this title.

Coastal Zone Management Act of 1972, referred to in subsec. (c)(10), is classified to chapter 33 (§ 1451 et seq.) of Title 16, Conservation.

Outer Continental Shelf Lands Act, referred to in subsec. (e)(3), is classified to section 1331 et seq. of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1506 of this title.

§ 1504. Procedure.

(a) Regulations; issuance, amendment, or rescission; scope.

The Secretary shall, as soon as practicable after January 3, 1975, and after consultation with other Federal agencies, issue regulations to carry out the purposes and provisions of this chapter in accord-

ance with the provisions of section 553 of Title 5, without regard to subsection (a) thereof. Such regulations shall pertain to, but need not be limited to, application, issuance, transfer, renewal, suspension, and termination of licenses. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments and with any potentially affected coastal State, and for consideration of the views of any interested members of the general public. The Secretary is further authorized, consistent with the purposes and provisions of this chapter, to amend or rescind any such regulation.

(b) Additional regulations; criteria for site evaluation and preconstruction testing.

The Secretary, in consultation with the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, shall, as soon as practicable after January 3, 1975, prescribe regulations relating to those activities involved in site evaluation and preconstruction testing at potential deepwater port locations that may (1) adversely affect the environment; (2) interfere with authorized uses of the Outer Continental Shelf; or (3) pose a threat to human health and welfare. Such activity may thenceforth not be undertaken except in accordance with regulations prescribed pursuant to this subsection. Such regulations shall be consistent with the purposes of this chapter.

(c) Plans; submittal to Secretary of Transportation; publication in Federal Register; application contents.

(1) Any person making an application under this chapter shall submit detailed plans to the Secretary. Within 21 days after the receipt of an application, the Secretary shall determine whether the application appears to contain all of the information required by paragraph (2) hereof. If the Secretary determines that such information appears to be contained in the application, the Secretary shall, no later than 5 days after making such a determination, publish notice of the application and a summary of the plans in the Federal Register. If the Secretary determines that all of the required information does not appear to be contained in the application, the Secretary shall notify the applicant and take no further action with respect to the application until such deficiencies have been remedied.

(2) Each application shall include such financial, technical, and other information as the Secretary deems necessary or appropriate. Such information shall include, but need not be limited to—

(A) the name, address, citizenship, telephone number, and the ownership interest in the applicant, of each person having any ownership interest in the applicant of greater than 3 per centum;

(B) to the extent feasible, the name, address, citizenship, and telephone number of any person with whom the applicant has made, or proposes to make, a significant contract for the construction or operation of the deepwater port and a copy of any such contract;

(C) the name, address, citizenship, and telephone number of each affiliate of the applicant and of any person required to be disclosed pursuant to subparagraphs (A) or (B) of this paragraph, together with a description of the manner in which such affiliate is associated with the applicant or any person required to be disclosed under subparagraph (A) or (B) of this paragraph;

(D) the proposed location and capacity of the deepwater port, including all components thereof;

(E) the type and design of all components of the deepwater port and any storage facilities associated with the deepwater port;

(F) with respect to construction in phases, a detailed description of each phase, including anticipated dates of completion for each of the specific components thereof;

(G) the location and capacity of existing and proposed storage facilities and pipelines which will store or transport oil transported through the deepwater port, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(H) with respect to any existing and proposed refineries which will receive oil transported through the deepwater port, the location and capacity of each such refinery and the anticipated volume of such oil to be refined by each such refinery, to the extent known by the applicant or any person required to be disclosed pursuant to subparagraphs (A), (B), or (C) of this paragraph;

(I) the financial and technical capabilities of the applicant to construct or operate the deepwater port;

(J) other qualifications of the applicant to hold a license under this chapter;

(K) a description of procedures to be used in constructing, operating, and maintaining the deepwater port, including systems of oil spill prevention, containment, and cleanup; and

(L) such other information as may be required by the Secretary to determine the environmental impact of the proposed deepwater port.

(d) Application area; publication in Federal Register; definition of "application area"; submission of other applications; notice of intent and submission of completed applications; denial of pending application prior to consideration of other untimely applications.

(1) At the time notice of an application is published pursuant to subsection (c) of this section, the Secretary shall publish a description in the Federal Register of an application area encompassing the deepwater port site proposed by such application and within which construction of the proposed deepwater port would eliminate, at the time such application was submitted, the need for any other deepwater port within that application area.

(2) As used in this section, "application area" means any reasonable geographical area within which a deepwater port may be constructed and operated. Such application area shall not exceed a circular zone, the center of which is the principal point of loading and unloading at the port, and the radius of which is the distance from such point to the high water mark of the nearest adjacent coastal State.

(3) The Secretary shall accompany such publication with a call for submission of any other applications for licenses for the ownership, construction, and operation of a deepwater port within the designated application area. Persons intending to file applications for such license shall submit a notice of intent to file an application with the Secretary not later than 60 days after the publication of notice pursuant to subsection (c) of this section and shall submit the completed application no later than 90 days after publication of such notice. The Secretary shall publish notice of any such application received in accordance with subsection (c) of this section. No application for a license for the ownership, construction, and operation of a deepwater port within the designated application area for which a notice of intent to file was received after such 60-day period, or which is received after such 90-day period has elapsed, shall be considered until the application pending with respect to such application area have been denied pursuant to this chapter.

(e) Recommendations to Secretary of Transportation; application for all Federal authorizations; copies of application to Federal agencies and departments with jurisdiction; recommendation of approval or disapproval and of manner of amendment to comply with laws or regulations.

(1) Not later than 30 days after January 3, 1975, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chief of Engineers of the United States Army Corps of Engineers, the Administrator of the National Oceanic and Atmospheric Administration, and the heads of any other Federal department or agencies having expertise concerning, or jurisdiction over, any aspect of the construction or operation of deepwater ports shall transmit to the Secretary written comments as to their expertise or statutory responsibilities pursuant to this chapter or any other Federal law.

(2) An application filed with the Secretary shall constitute an application for all Federal authorizations required for ownership, construction, and operation of a deepwater port. At the time notice of any application is published pursuant to subsection (c) of this section, the Secretary shall forward a copy of such application to those Federal agencies and departments with jurisdiction over any aspect of such ownership, construction, or operation for comment, review, or recommendation as to conditions and for such other action as may be required by law. Each agency or department involved shall review the application and, based upon legal considerations within its area of responsibility, recommend to the Secretary, the approval or disapproval of the application not later than 45 days after the last public hearing on a proposed license for a designated application area. In any case in which the agency or department recommends disapproval, it shall set forth in detail the manner in which the application does not comply with any law or regulation within its area of responsibility and shall notify the Secretary how the application may be amended so as to bring it into compliance with the law or regulation involved.

(f) Environmental impact statement for single application area; criteria.

For all timely applications covering a single application area, the Secretary, in cooperation with other involved Federal agencies and departments, shall, pursuant to section 4332(2)(C) of Title 42, prepare a single, detailed environmental impact statement, which shall fulfill the requirement of all Federal agencies in carrying out their responsibilities pursuant to this chapter to prepare an environmental impact statement. In preparing such statement the Secretary shall consider the criteria established under section 1505 of this title.

(g) Public notice and hearings; evidentiary hearing in District of Columbia; decision of Secretary based on evidentiary record; consolidation of hearings.

A license may be issued, transferred, or renewed only after public notice and public hearings in accordance with this subsection. At least one such public hearing shall be held in each adjacent coastal State. Any interested person may present relevant material at any hearing. After hearings in each adjacent coastal State are concluded if the Secretary determines that there exists one or more specific and material factual issues which may be resolved by a formal evidentiary hearing, at least one adjudicatory hearing shall be held in accordance with the provisions of section 554 of Title 5 in the District of Columbia. The record developed in any such adjudicatory hearing shall be basis for the Secretary's decision to approve or deny a license. Hearings held pursuant to this subsection shall be consolidated insofar as practicable with hearings held by other agencies. All public hearings on all applications for any designated application area shall be consolidated and shall be concluded not later than 240 days after notice of the initial application has been published pursuant to subsection (c) of this section.

(h) Nonrefundable application fee; processing costs; State fees; "land-based facilities directly related to a deepwater port facility" defined; fair market rental value, advance payment.

(1) Each person applying for a license pursuant to this chapter shall remit to the Secretary at the time the application is filed a nonrefundable application fee established by regulation by the Secretary. In addition, an applicant shall also reimburse the United States and the appropriate adjacent coastal State for any additional costs incurred in processing an application.

(2) Notwithstanding any other provision of this chapter, an adjacent coastal State may fix reasonable fees for the use of a deepwater port facility, and such State and any other State in which land-based facilities directly related to a deepwater port facility are located may set reasonable fees for the use of such land-based facilities. Fees may be fixed under authority of this paragraph as compensation for any economic cost attributable to the construction and operation of such deepwater port and such land-based facilities, which cannot be recovered under other authority of such State or political subdivision thereof, including, but not limited to, ad valorem taxes, and for environmental and administrative costs attributable to the construction and operation

of such deepwater port and such land-based facilities. Fees under this paragraph shall not exceed such economic, environmental, and administrative costs of such State. Such fees shall be subject to the approval of the Secretary. As used in this paragraph, the term "land-based facilities directly related to a deepwater port facility" means the onshore tank farm and pipelines connecting such tank farm to the deepwater port facility.

(3) A licensee shall pay annually in advance the fair market rental value (as determined by the Secretary of the Interior) of the subsoil and seabed of the Outer Continental Shelf of the United States to be utilized by the deepwater port, including the fair market rental value of the right-of-way necessary for the pipeline segment of the port located on such subsoil and seabed.

(i) Application approval; period for determination; priorities; criteria for determination of application best serving national interest.

(1) The Secretary shall approve or deny any application for a designated application area submitted pursuant to this chapter not later than 90 days after the last public hearing on a proposed license for that area.

(2) In the event more than one application is submitted for an application area, the Secretary, unless one of the proposed deepwater ports clearly best serves the national interest, shall issue a license according to the following order of priorities:

(A) to an adjacent coastal State (or combination of States), any political subdivision thereof, or agency or instrumentality, including a wholly owned corporation of any such government;

(B) to a person who is neither (i) engaged in producing, refining, or marketing oil, nor (ii) an affiliate of any person who is engaged in producing, refining, or marketing oil or an affiliate of any such affiliate;

(C) to any other person.

(3) In determining whether any one proposed deepwater port clearly best serves the national interest, the Secretary shall consider the following factors:

(A) the degree to which the proposed deepwater ports affect the environment, as determined under criteria established pursuant to section 1505 of this title;

(B) any significant differences between anticipated completion dates for the proposed deepwater ports; and

(C) any differences in costs of construction and operation of the proposed deepwater ports, to the extent that such differential may significantly affect the ultimate cost of oil to the consumer.

(Pub. L. 93–627, § 5, Jan. 3, 1975, 88 Stat. 2131.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1505, 1508, 1509, 1513 of this title.

§ 1505. Environmental review criteria.

(a) Establishment; evaluation of proposed deepwater ports.

The Secretary, in accordance with the recommendations of the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration and after consultation with any other Federal departments and agencies having jurisdiction over any aspect of the construction or operation of a deepwater port, shall establish, as soon as practicable after January 3, 1975, environmental review criteria consistent with the National Environmental Policy Act. Such criteria shall be used to evaluate a deepwater port as proposed in an application, including—

(1) the effect on the marine environment;

(2) the effect on oceanographic currents and wave patterns;

(3) the effect on alternate uses of the oceans and navigable waters, such as scientific study, fishing, and exploitation of other living and nonliving resources;

(4) the potential dangers to a deepwater port from waves, winds, weather, and geological conditions, and the steps which can be taken to protect against or minimize such dangers;

(5) effects of land-based developments related to deepwater port development;

(6) the effect on human health and welfare; and

(7) such other considerations as the Secretary deems necessary or appropriate.

(b) Review and revision.

The Secretary shall periodically review and, whenever necessary, revise in the same manner as originally developed, criteria established pursuant to subsection (a) of this section.

(c) Concurrent development of criteria and regulations.

Criteria established pursuant to this section shall be developed concurrently with the regulations in subsection (a) of section 1504 of this title and in accordance with the provisions of that subsection.

(Pub. L. 93–627, § 6, Jan. 3, 1975, 88 Stat. 2135.)

REFERENCES IN TEXT

National Environmental Policy Act, referred to in subsec. (a), is classified to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1503, 1504 of this title.

§ 1506. Antitrust review.

(a) Opinions of Attorney General and Federal Trade Commission; defense to judicial proceedings, license inadmissible.

The Secretary shall not issue, transfer, or renew any license pursuant to section 1503 of this title unless he has received the opinions of the Attorney General of the United States and the Federal Trade Commission as to whether such action would adversely affect competition, restrain trade, promote monopolization, or otherwise create a situation in contravention of the antitrust laws. The issuance of a license under this chapter shall not be admissible in any way as a defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

(b) Applications; submittal to Attorney General and Federal Trade Commission for preparation of reports to Secretary of Transportation; antitrust laws unaffected.

(1) Whenever any application for issuance, transfer, substantial change in, or renewal of any license is received, the Secretary shall transmit promptly to the Attorney General and the Federal Trade Commission a complete copy of such application. Within 45 days following the last public hearing, the Attorney General and the Federal Trade Commission shall each prepare and submit to the Secretary a report assessing the competitive effects which may result from issuance of the proposed license and the opinions described in subsection (a) of this section. If either the Attorney General or the Federal Trade Commission, or both, fails to file such views within such period, the Secretary shall proceed as if he had received such views.

(2) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the ownership, construction, or operation of a deepwater port.

(3) Nothing contained in this section shall impair, amend, broaden or modify any of the antitrust laws. (Pub. L. 93–627, § 7, Jan. 3, 1975, 88 Stat. 2135.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1503 of this title.

§ 1507. Common carrier status; discrimination prohibition; enforcement, suspension, or termination proceedings.

(a) For the purpose of chapter 39 of Title 18 (sections 831–837 of Title 18), and part I of the Interstate Commerce Act (sections 1–27 of Title 49), a deepwater port and storage facilities serviced directly by such deepwater port shall be subject to regulation as a common carrier in accordance with the Interstate Commerce Act, as amended.

(b) A licensee under this chapter shall accept, transport, or convey without discrimination all oil delivered to the deepwater port with respect to which its license is issued. Whenever the Secretary has reason to believe that a licensee is not operating a deepwater port, any storage facility or component thereof, in compliance with its obligations as a common carrier, the Secretary shall commence an appropriate proceeding before the Interstate Commerce Commission or he shall request the Attorney General to take appropriate steps to enforce such obligation and, where appropriate, to secure the imposition of appropriate sanctions. The Secretary may, in addition, proceed as provided in section 1511 of this title to suspend or terminate the license of any person so involved. (Pub. L. 93–627, § 8, Jan. 3, 1975, 88 Stat. 2136.)

REFERENCES IN TEXT

Interstate Commerce Act, as amended, referred to in subsec. (a), is classified to chapters 1, 8, 12, 13, and 19 of Title 49, Transportation.

§ 1508. Adjacent coastal States.

(a) Designation; direct pipeline connections; mileage; risk of damage to coastal environment, time for designation.

(1) The Secretary, in issuing notice of application pursuant to section 1504(c) of this title, shall designate as an "adjacent coastal State" any coastal State which (A) would be directly connected by pipeline to a deepwater port as proposed in an application, or (B) would be located within 15 miles of any such proposed deepwater port.

(2) The Secretary shall, upon request of a State, and after having received the recommendations of the Administrator of the National Oceanic and Atmospheric Administration, designate such State as an "adjacent coastal State" if he determines that there is a risk of damage to the coastal environment of such State equal to or greater than the risk posed to a State directly connected by pipeline to the proposed deepwater port. This paragraph shall apply only with respect to requests made by a State not later than the 14th day after the date of publication of notice of an application for a proposed deepwater port in the Federal Register in accordance with section 1504(c) of this title. The Secretary shall make the designation required by this paragraph not later than the 45th day after the date he receives such a request from a State.

(b) Applications; submittal to Governors for approval or disapproval; consistency of Federal licenses and State programs; views of other interested States.

(1) Not later than 10 days after the designation of adjacent coastal States pursuant to this chapter, the Secretary shall transmit a complete copy of the application to the Governor of each adjacent coastal State. The Secretary shall not issue a license without the approval of the Governor of each adjacent coastal State. If the Governor fails to transmit his approval or disapproval to the Secretary not later than 45 days after the last public hearing on applications for a particular application area, such approval shall be conclusively presumed. If the Governor notifies the Secretary that an application, which would otherwise be approved pursuant to this paragraph, is inconsistent with State programs relating to environmental protection, land and water use, and coastal zone management, the Secretary shall condition the license granted so as to make it consistent with such State programs.

(2) Any other interested State shall have the opportunity to make its views known to, and shall be given full consideration by, the Secretary regarding the location, construction, and operation of a deepwater port.

(c) Reasonable progress toward development of coastal zone management program; planning grants.

The Secretary shall not issue a license unless the adjacent coastal State to which the deepwater port is to be directly connected by pipeline has developed, or is making, at the time the application is submitted, reasonable progress toward developing an approved coastal zone management program pursuant to the Coastal Zone Management Act of 1972 in the area to be directly and primarily impacted by land and water development in the coastal zone resulting from such deepwater port. For the purposes of this chapter, a State shall be considered to be making reasonable progress if it is receiving a planning grant pursuant to section 305 of the Coastal Zone Management Act.

(d) State agreements or compacts.

The consent of Congress is given to two or more coastal States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, (1) to apply for a license for the ownership, construction, and operation of a deepwater port or for the transfer of such license, and (2) to establish such agencies, joint or otherwise, as are deemed necessary or appropriate for implementing and carrying out the provisions of any such agreement or compact. Such agreement or compact shall be binding and obligatory upon any State or party thereto without further approval by Congress. (Pub. L. 93–627, § 9, Jan. 3, 1975, 88 Stat. 2136.)

REFERENCES IN TEXT

Coastal Zone Management Act of 1972, and section 305 of such Act, referred to in subsec. (c), are classified to chapter 33 and section 1454 of Title 16, Conservation, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1502, 1503 of this title.

§ 1509. Marine environmental protection and navigational safety.

(a) Regulations and procedures.

Subject to recognized principles of international law, the Secretary shall prescribe by regulation and enforce procedures with respect to any deepwater port, including, but not limited to, rules governing vessel movement, loading and unloading procedures, designation and marking of anchorage areas, maintenance, law enforcement, and the equipment, training, and maintenance required (A) to prevent pollution of the marine environment, (B) to clean up any pollutants which may be discharged, and (C) to otherwise prevent or minimize any adverse impact from the construction and operation of such deepwater port.

(b) Safety of property and life; regulations.

The Secretary shall issue and enforce regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property in any deepwater port and the waters adjacent thereto.

(c) Marking of components; payment of cost.

The Secretary shall mark, for the protection of navigation, any component of a deepwater port whenever the licensee fails to mark such component in accordance with applicable regulations. The licensee shall pay the cost of such marking.

(d) Safety zones; designation; construction period; permitted activities.

(1) Subject to recognized principles of international law and after consultation with the Secretary of the Interior, the Secretary of Commerce, the Secretary of State, and the Secretary of Defense, the Secretary shall designate a zone of appropriate size around and including any deepwater port for the purpose of navigational safety. In such zone, no installations, structures, or uses will be permitted that are incompatible with the operation of the deepwater port. The Secretary shall by regulation define permitted activities within such zone. The Secretary shall, not later than 30 days after publication of notice pursuant to section 1504(c) of this title, designate such safety zone with respect to any proposed deepwater port.

(2) In addition to any other regulations, the Secretary is authorized, in accordance with this subsection, to establish a safety zone to be effective during the period of construction of a deepwater port and to issue rules and regulations relating thereto. (Pub. L. 93–627, § 10, Jan. 3, 1975, 88 Stat. 2137.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1502 of this title.

§ 1510. International agreements.

The Secretary of State, in consultation with the Secretary, shall seek effective international action and cooperation in support of the policy and purposes of this chapter and may formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations relative to the construction, ownership, and operation of deepwater ports, with particular regard for measures that assure protection of such facilities as well as the promotion of navigational safety in the vicinity thereof. (Pub. L. 93–627, § 11, Jan. 3, 1975, 88 Stat. 2138.)

§ 1511. Suspension or termination of licenses.

(a) Proceedings by Attorney General; venue; conditions subsequent.

Whenever a licensee fails to comply with any applicable provision of this chapter, or any applicable rule, regulation, restriction, or condition issued or imposed by the Secretary under the authority of this chapter, the Attorney General, at the request of the Secretary, may, file an appropriate action in the United States district court nearest to the location of the proposed or actual deepwater port, as the case may be, or in the district in which the licensee resides or may be found, to—

(1) suspend the license; or

(2) if such failure is knowing and continues for a period of thirty days after the Secretary mails notification of such failure by registered letter to the licensee at his record post office address, revoke such license.

No proceeding under this subsection is necessary if the license, by its terms, provides for automatic suspension or termination upon the occurrence of a fixed or agreed upon condition, event, or time.

(b) Public health or safety; danger to environment; completion of proceedings.

If the Secretary determines that immediate suspension of the construction or operation of a deepwater port or any component thereof is necessary to protect public health or safety or to eliminate imminent and substantial danger to the environment, he shall order the licensee to cease or alter such construction or operation pending the completion of a judicial proceeding pursuant to subsection (a) of this section. (Pub. L. 93–627, § 12, Jan. 3, 1975, 88 Stat. 2138.)

CODIFICATION

"Chapter" was substituted for "title" in subsec. (a) to conform to other substitutions for "Act" and as reflecting intent of Congress manifest throughout Pub. L. 93–627 in the use of the term "Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1507 of this title.

§ 1512. Recordkeeping and inspection.

(a) Regulations; regulations under other provisions unaffected.

Each licensee shall establish and maintain such records, make such reports, and provide such information as the Secretary, after consultation with other interested Federal departments and agencies, shall by regulation prescribe to carry out the provision of this chapter. Such regulations shall not amend, contradict or duplicate regulations established pursuant to part I of the Interstate Commerce Act or any other law. Each licensee shall submit such reports and shall make such records and information available as the Secretary may request.

(b) Access to deepwater ports in enforcement proceedings and execution of official duties; inspections and tests; notification of results.

All United States officials, including those officials responsible for the implementation and enforcement of United States laws applicable to a deepwater port, shall at all times be afforded reasonable access to a deepwater port licensed under this chapter for the purpose of enforcing laws under their jurisdiction or otherwise carrying out their responsibilities. Each such official may inspect, at reasonable times, records, files, papers, processes, controls, and facilities and may test any feature of a deep water port. Each inspection shall be conducted with reasonable promptness, and such licensee shall be notified of the results of such inspection. (Pub. L. 93–627, § 13, Jan. 3, 1975, 88 Stat. 2139.)

REFERENCES IN TEXT

Part I of Interstate Commerce Act, referred to in subsec. (a), is classified to chapter 1 of Title 49, Transportation.

§ 1513. Public access to information.

(a) Inspection of copies; reproduction costs; protected information.

Copies of any communication, document, report, or information transmitted between any official of the Federal Government and any person concerning a deepwater port (other than contracts referred to in section 1504(c)(2)(B) of this title) shall be made available to the public for inspection, and shall be available for the purpose of reproduction at a reasonable cost, to the public upon identifiable request, unless such information may not be publicly released under the terms of subsection (b) of this section. Except as provided in subsection (b) of this section, nothing contained in this section shall be construed to require the release of any information of the kind described in subsection (b) of section 552 of Title 5 or which is otherwise protected by law from disclosure to the public.

(b) Information disclosure prohibition; confidentiality of certain disclosures.

The Secretary shall not disclose information obtained by him under this chapter that concerns or relates to a trade secret, referred to in section 1905 of Title 18, or to a contract referred to in section 1504(c)(2)(B) of this title, except that such information may be disclosed, in a manner which is designed to maintain confidentiality—

(1) to other Federal and adjacent coastal State government departments and agencies for official use, upon request;

(2) to any committee of Congress having jurisdiction over the subject matter to which the information relates, upon request;

(3) to any person in any judicial proceeding, under a court order formulated to preserve such confidentiality without impairing the proceedings; and

(4) to the public in order to protect health and safety, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the party to which the information pertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health and safety).

(Pub. L. 93–627, § 14, Jan. 3, 1975, 88 Stat. 2139.)

§ 1514. Remedies.

(a) Criminal penalties.

Any person who willfully violates any provision of this chapter or any rule, order, or regulation issued pursuant thereto shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than 1 year, or both.

(b) Orders of compliance; Attorney General's civil action; jurisdiction and venue.

(1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any provision of this chapter or any rule, regulation, order, license, or condition thereof, or other requirements under this chapter, he shall issue an order requiring such person to comply with such provision or requirement, or he shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Upon a request by the Secretary, the Attorney General shall commence a civil action for appropriate relief, including a permanent or temporary injunction or a civil penalty not to exceed $25,000 per day of such violation, for any violation for which the Secretary is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation, require compliance, or impose such penalty.

(c) Attorney General's action for equitable relief; scope of relief.

Upon a request by the Secretary, the Attorney General shall bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of this chapter, any regulation under this chapter, or any license condition. The district courts of the United States shall have jurisdiction to grant such

relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, compensatory damages, and punitive damages.

(d) Vessels; liability in rem; exempt vessels; consent or privy of owners or bareboat charterers.

Any vessel, except a public vessel engaged in noncommercial activities, used in a violation of this chapter or of any rule or regulation issued pursuant to this chapter, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation, a consenting party or privy to such violation. (Pub. L. 93–627, § 15, Jan. 3, 1975, 88 Stat. 2140.)

§ 1515. Citizen civil action.

(a) Equitable relief; case or controversy; district court jurisdiction.

Except as provided in subsection (b) of this section, any person may commence a civil action for equitable relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any provision of this chapter or any condition of a license issued pursuant to this chapter; or

(2) against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this chapter which is not discretionary with the Secretary. Any action brought against the Secretary under this paragraph shall be brought in the district court for the District of Columbia or the district of the appropriate adjacent coastal State.

In suits brought under this chapter, the district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce any provision of this chapter or any condition of a license issued pursuant to this chapter, or to order the Secretary to perform such act or duty, as the case may be.

(b) Notice; intervention of right by person.

No civil action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Secretary and (ii) to any alleged violator; or

(B) if the Secretary or the Attorney General has commenced and is diligently prosecuting a civil or criminal action with respect to such matters in a court of the United States, but in any such action any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Secretary.

Notice under this subsection shall be given in such a manner as the Secretary shall prescribe by regulation.

(c) Intervention of right by Secretary or Attorney General.

In any action under this section, the Secretary or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs of litigation; attorney and witness fees.

The Court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines that such an award is appropriate.

(e) Statutory or common law rights unaffected.

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement or to seek any other relief. (Pub. L. 93–627, § 16, Jan. 3, 1975, 88 Stat. 2140.)

§ 1516. Judicial review; persons aggrieved; jurisdiction of courts of appeal.

Any person suffering legal wrong, or who is adversely affected or aggrieved by the Secretary's decision to issue, transfer, modify, renew, suspend, or revoke a license may, not later than 60 days after any such decision is made, seek judicial review of such decision in the United States Court of Appeals for the circuit within which the nearest adjacent coastal State is located. A person shall be deemed to be aggrieved by the Secretary's decision within the meaning of this chapter if he—

(A) has participated in the administrative proceedings before the Secretary (or if he did not so participate, he can show that his failure to do so was caused by the Secretary's failure to provide the required notice); and

(B) is adversely affected by the Secretary's action.

(Pub. L. 93–627, § 17, Jan. 3, 1975, 88 Stat. 2141.)

§ 1517. Liability.

(a) Oil discharge; prohibition; penalty; notice and hearing; separate offense; vessel clearance: withholding, bond or surety.

(1) The discharge of oil into the marine environment from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port is prohibited.

(2) The owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged in violation of this subsection shall be assessed a civil penalty of not more than $10,000 for each violation. No penalty shall be assessed unless the owner or operator or the licensee has been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. The Secretary of the Treasury shall withhold, at the request of the Secretary, the clearance required by section 91 of Title 46, of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.

(b) Oil discharge; notification; penalty; use of notification in criminal cases limited.

Any individual in charge of a vessel or a deepwater port shall notify the Secretary as soon as he has knowledge of a discharge of oil. Any such individual who fails to notify the Secretary immediately of such discharge shall, upon conviction, be fined not more than $10,000 or imprisoned for not more than 1 year, or both. Notification received pursuant to this subsection, or information obtained by the use of such notification, shall not be used against any such individual in any criminal case, except a prosecution for perjury or for giving a false statement.

(c) Oil removal; drawing upon Fund money for cleanup costs.

(1) Whenever any oil is discharged from a vessel within any safety zone, from a vessel which has received oil from another vessel at a deepwater port, or from a deepwater port, the Secretary shall remove or arrange for the removal of such oil as soon as possible, unless he determines such removal will be done properly and expeditiously by the licensee of the deepwater port or the owner or operator of the vessel from which the discharge occurs.

(2) Removal of oil and actions to minimize damage from oil discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan for removal of oil and hazardous substances established pursuant to section 1321(e)(2) of this title.

(3) Whenever the Secretary acts to remove a discharge of oil pursuant to this subsection, he is authorized to draw upon money available in the Deepwater Port Liability Fund established pursuant to subsection (f) of this section. Such money shall be used to pay promptly for all cleanup costs incurred by the Secretary in removing or in minimizing damage caused by such oil discharge.

(d) Joint and several liability of owners and operators; limitation of liability; full amount of liability for gross negligence or willful misconduct.

Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the owner and operator of a vessel shall be jointly and severally liable, without regard to fault, for cleanup costs and for damages that result from a discharge of oil from such vessel within any safety zone, or from a vessel which has received oil from another vessel at a deepwater port, except when such vessel is moored at a deepwater port. Such liability shall not exceed $150 per gross ton or $20,000,000, whichever is lesser, except that if it can be shown that such discharge was the result of gross negligence or willful misconduct within the privity and knowledge of the owner or operator, such owner and operator shall be jointly and severally liable for the full amount of all cleanup costs and damages.

(e) Liability of licensees; limitation of liability; full amount of liability for gross negligence or willful misconduct.

Notwithstanding any other provision of law, except as provided in subsection (g) of this section, the licensee of a deepwater port shall be liable, without regard to fault, for cleanup costs and damages that result from a discharge of oil from such deepwater port or from a vessel moored at such deepwater port. Such liability shall not exceed $50,000,000, except that if it can be shown that such damage was the result of gross negligence or willful misconduct within the privity and knowledge of the licensee, such licensee shall be liable for the full amount of all cleanup costs and damages.

(f) Deepwater Port Liability Fund; establishment; suits; administration; liability for uncompensated cleanup costs and damages; fees and exemptions; maintenance of prescribed amount of money; loans from Treasury for payment of claims; interest; appropriation for administration costs; income from investments to principal of Fund.

(1) There is established a Deepwater Port Liability Fund (hereinafter referred to as the "Fund") as a nonprofit corporate entity which may sue or be sued in its own name. The Fund shall be administered by the Secretary.

(2) The Fund shall be liable, without regard to fault, for all cleanup costs and all damages in excess of those actually compensated pursuant to subsections (d) and (e) of this section.

(3) Each licensee shall collect from the owner of any oil loaded or unloaded at the deepwater port operated by such licensee, at the time of loading or unloading, a fee of 2 cents per barrel, except that (A) bunker or fuel oil for the use of any vessel, and (B) oil which was transported through the trans-Alaska pipeline, shall not be subject to such collection. Such collections shall be delivered to the Fund at such times and in such manner as shall be prescribed by the Secretary. Such collections shall cease after the amount of money in the Fund has reached $100,000,000, unless there are adjudicated claims against the Fund yet to be satisfied. Collection shall be resumed when the Fund is reduced below $100,000,000. Whenever the money in the Fund is less than the claims for cleanup costs and damages for which it is liable under this section, the Fund shall borrow the balance required to pay such claims from the United States Treasury at an interest rate determined by the Secretary of the Treasury. Costs of administration shall be paid from the Fund only after appropriation in an appropriation bill. All sums not needed for administration and the satisfaction of claims shall be prudently invested in income-producing securities issued by the United States and approved by the Secretary of the Treasury. Income from such securities shall be applied to the principal of the Fund.

(g) Defenses; act of war; negligence of Federal Government; negligence of claimant.

Liability shall not be imposed under subsection (d) or (e) of this section if the owner or operator of a vessel or the licensee can show that the discharge was caused solely by (1) an act of war, or (2) negligence on the part of the Federal Government in establishing and maintaining aids to navigation. In addition, liability with respect to damages claimed by a damaged party shall not be imposed under subsection (d), (e), or (f) of this section if the owner or operator of a vessel, the licensee, or the Fund can show that such damage was caused solely by the negligence of such party.

(h) Subrogation; third party liability; recovery of reasonable cleanup cost of discharge caused by act of war or negligence of Federal Government.

(1) In any case where liability is imposed pursuant to subsection (d) of this section, if the discharge was the result of the negligence of the licensee, the owner or operator of a vessel held liable shall be subrogated to the rights of any person entitled to recovery against such licensee.

(2) In any case where liability is imposed pursuant to subsection (e) of this section, if the discharge was the result of the unseaworthiness of a vessel or the negligence of the owner or operator of such vessel, the licensee shall be subrogated to the rights of any person entitled to recovery against such owner or operator.

(3) Payment of compensation for any damages pursuant to subsection (f)(2) of this section shall be subject to the Fund acquiring by subrogation all rights of the claimant to recover for such damages from any other person.

(4) The liabilities established in this section shall in no way affect or limit any rights which the licensee, the owner, or operator of a vessel, or the Fund may have against any third party whose act may in any way have caused or contributed to a discharge of oil.

(5) In any case where the owner or operator of a vessel or the licensee of a deepwater port from which oil is discharged acts to remove such oil in accordance with subsection (c)(1) of this section, such owner or operator or such licensee shall be entitled to recover from the Fund the reasonable cleanup cost incurred in such removal if he can show that such discharge was caused solely by (A) an act of war or (B) negligence on the part of the Federal Government in establishing and maintaining aids to navigation.

(i) Class actions: Attorney General, member of group; notice, publication in Federal Register and newspapers; trustee's action for damages to natural resources of marine environment; restoration and rehabilitation of such resources.

(1) The Attorney General may act on behalf of any group of damaged citizens he determines would be more adequately represented as a class in recovery of claims under this section. Sums recovered shall be distributed to the members of such group. If, within 90 days after a discharge of oil in violation of this section has occurred, the Attorney General fails to act in accordance with this paragraph, to sue on behalf of a group of persons who may be entitled to compensation pursuant to this section for damages caused by such discharge, any member of such group may maintain a class action to recover such damages on behalf of such group. Failure of the Attorney General to act in accordance with this subsection shall have no bearing on any class action maintained in accordance with this paragraph.

(2) In any case where the number of members in the class exceeds 1,000, publishing notice of the action in the Federal Register and in local newspapers serving the areas in which the damaged parties reside shall be deemed to fulfill the requirement for public notice established by rule 23(c)(2) of the Federal Rules of Civil Procedure.

(3) The Secretary may act on behalf of the public as trustee of the natural resources of the marine environment to recover for damages to such resources in accordance with this section. Sums recovered shall be applied to the restoration and rehabilitation of such natural resources by the appropriate agencies of Federal or State government.

(j) Procedures for filing and payment of claims for cleanup costs and damages; limitations; appeals.

(1) The Secretary shall establish by regulation procedures for the filing and payment of claims for cleanup costs and damages pursuant to this chapter.

(2) No claims for payment of cleanup costs or damages which are filed with the Secretary more than 3 years after the date of the discharge giving rise to such claims shall be considered.

(3) Appeals from any final determination of the Secretary pursuant to this section shall be filed not later than 30 days after such determination in the United States Court of Appeals of the circuit within which the nearest adjacent coastal State is located.

(k) Federal preemption unintended; additional State requirements or liability; bar against multiple recoveries.

(1) This section shall not be interpreted to preempt the field of liability or to preclude any State from imposing additional requirements or liability for any discharge of oil from a deepwater port or a vessel within any safety zone.

(2) Any person who receives compensation for damages pursuant to this section shall be precluded from recovering compensation for the same damages pursuant to any other State or Federal law. Any person who receives compensation for damages pursuant to any other Federal or State law shall be precluded from receiving compensation for the same damages as provided in this section.

(l) Financial responsibility.

The Secretary shall require that any owner or operator of a vessel using any deepwater port, or any licensee of a deepwater port, shall carry insurance or give evidence of other financial responsibility in an amount sufficient to meet the liabilities imposed by this section.

(m) Definitions.

As used in this section the term—

(1) "cleanup costs" means all actual costs, including but not limited to costs of the Federal Government, of any State or local government, of other nations or of their contractors or subcontractors incurred in the (A) removing or attempting to remove, or (B) taking other measures to reduce or mitigate damages from, any oil discharged into the marine environment in violation of subsection (a)(1) of this section;

(2) "damages" means all damages (except cleanup costs) suffered by any person, or involving real or personal property, the natural resources of the marine environment, or the coastal environment of any nation, including damages claimed without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or natural resources;

(3) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into the marine environment of quantities of oil determined to be

harmful pursuant to regulations issued by the Administrator of the Environmental Protection Agency; and

(4) "owner or operator" means any person owning, operating, or chartering by demise, a vessel.

(n) Study for a uniform law for cleanup costs and damages from oil spills; adjudication and settlement of claims; report to Congress.

(1) The Attorney General, in cooperation with the Secretary, the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Council on Environmental Quality, and the Administrative Conference of the United States, is authorized and directed to study methods and procedures for implementing a uniform law providing liability for cleanup costs and damages from oil spills from Outer Continental Shelf operations, deepwater ports, vessels, and other ocean-related sources. The study shall give particular attention to methods of adjudicating and settling claims as rapidly, economically, and equitably as possible.

(2) The Attorney General shall report the results of his study together with any legislative recommendations to the Congress within 6 months after January 3, 1975. (Pub. L. 93–627, § 18, Jan. 3, 1975, 88 Stat. 2141.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1503 of this title.

§ 1518. Relationship to other laws.

(a) Federal Constitution, laws, and treaties applicable; other Federal requirements applicable; status of deepwater port; Federal or State authorities and responsibilities within territorial seas unaffected.

(1) The Constitution, laws, and treaties of the United States shall apply to a deepwater port licensed under this chapter and to activities connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. Nothing in this chapter shall be construed to relieve, exempt, or immunize any person from any other requirement imposed by Federal law, regulation, or treaty. Deepwater ports licensed under this chapter do not possess the status of islands and have no territorial seas of their own.

(2) Except as otherwise provided by this chapter, nothing in this chapter shall in any way alter the responsibilities and authorities of a State or the United States within the territorial seas of the United States.

(b) Law of nearest adjacent coastal State as applicable Federal law; Federal administration and enforcement of such law; nearest adjacent coastal State defined.

The law of the nearest adjacent coastal State, now in effect or hereafter adopted, amended, or repealed, is declared to be the law of the United States, and shall apply to any deepwater port licensed pursuant to this chapter, to the extent applicable and not inconsistent with any provision or regulation under this chapter or other Federal laws and regulations now in effect or hereafter adopted, amended, or repealed. All such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. For purposes of this subsection, the nearest adjacent coastal State shall be that State whose seaward boundaries, if extended beyond 3 miles, would encompass the site of the deepwater port.

(c) Vessels of foreign states subject to Federal jurisdiction; designation of agent for service of process.

Except in a situation involving force majeure, a licensee of a deepwater port shall not permit a vessel, registered in or flying the flag of a foreign state, to call at, or otherwise utilize a deepwater port licensed under this chapter unless (1) the foreign state involved, by specific agreement with the United States, has agreed to recognize the jurisdiction of the United States over the vessel and its personnel, in accordance with the provisions of this chapter, while the vessel is located within the safety zone, and (2) the vessel owner or operator has designated an agent in the United States for receipt of service of process in the event of any claim or legal proceeding resulting from activities of the vessel or its personnel while located within such a safety zone.

(d) Customs laws inapplicable to deepwater port; duties and taxes on foreign articles imported into customs territory of United States.

The customs laws administered by the Secretary of the Treasury shall not apply to any deepwater port licensed under this chapter, but all foreign articles to be used in the construction of any such deepwater port, including any component thereof, shall first be made subject to all applicable duties and taxes which would be imposed upon or by reason of their importation if they were imported for consumption in the United States. Duties and taxes shall be paid thereon in accordance with laws applicable to merchandise imported into the customs territory of the United States.

(e) Federal district courts; original jurisdiction; venue.

The United States district courts shall have original jurisdiction of cases and controversies arising out of or in connection with the construction and operation of deepwater ports, and proceedings with respect to any such case or controversy may be instituted in the judicial district in which any defendant resides or may be found, or in the judicial district of the adjacent coastal State nearest the place where the cause of action arose. (Pub. L. 93–627, § 19(a)–(e), Jan. 3, 1975, 88 Stat. 2145, 2146.)

CODIFICATION

Section 19(f) of Pub. L. 93–627 amended section 1333 (a) (2) of Title 43, Public Lands.

§ 1519. Annual report by Secretary to Congress; recommendations to Congress.

Within 6 months after the end of each fiscal year, the Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives (1) a report on the administration of this chapter during such fiscal year, including all deepwater port development activities; (2) a summary of management, supervision, and enforcement activities; and (3) recommendations to the Congress

for such additional legislative authority as may be necessary to improve the management and safety of deepwater port development and for resolution of jurisdictional conflicts or ambiguities. (Pub. L. 93–627, § 20, Jan. 3, 1975, 88 Stat. 2146.)

§ 1520. Pipeline safety and operation.

(a) Standards and regulations for Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, shall establish and enforce such standards and regulations as may be necessary to assure the safe construction and operation of oil pipelines on the Outer Continental Shelf.

(b) Report to Congress; monitoring requirements for Federal lands and Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to report to the Congress within 60 days after January 3, 1975, on appropriations and staffing needed to monitor pipelines on Federal lands and the Outer Continental Shelf so as to assure that they meet all applicable standards for construction, operation, and maintenance.

(c) Report to Congress; review of laws and regulations affecting Federal lands and Outer Continental Shelf.

The Secretary, in cooperation with the Secretary of the Interior, is authorized and directed to review all laws and regulations relating to the construction, operation, and maintenance of pipelines on Federal lands and the Outer Continental Shelf and to report to Congress thereon within 6 months after January 3, 1975, on administrative changes needed and recommendations for new legislation. (Pub. L. 93–627, § 21, Jan. 3, 1975, 88 Stat. 2146.)

§ 1521. Negotiations with Canada and Mexico; report to Congress.

The President of the United States is authorized and requested to enter into negotiations with the Governments of Canada and Mexico to determine:

(1) the need for intergovernmental understandings, agreements, or treaties to protect the interest of the people of Canada, Mexico, and the United States and of any party or parties involved with the construction or operation of deepwater ports; and

(2) the desirability of undertaking joint studies and investigations designed to insure protection of the environment and to eliminate any legal and regulatory uncertainty, to assure that the interests of the people of Canada, Mexico, and the United States are adequately met.

The President shall report to the Congress the actions taken, the progress achieved, the areas of disagreement, and the matters about which more information is needed, together with his recommendations for further action. (Pub. L. 93–627, § 22, Jan. 3, 1975, 88 Stat. 2147.)

§ 1522. Limitations on export provisions of section 185(u) of Title 30 unaffected.

Nothing in this chapter shall be construed to amend, restrict, or otherwise limit the application of section 185(u) of Title 30. (Pub. L. 93–627, § 23, Jan. 3, 1975, 88 Stat. 2147.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1502 of this title.

§ 1523. General procedures; issuance and enforcement of orders; scope of authority; evidentiary matters.

The Secretary or his delegate shall have the authority to issue and enforce orders during proceedings brought under this chapter. Such authority shall include the authority to issue subpenas, administer oaths, compel the attendance and testimony of witnesses and the production of books, papers, documents, and other evidence, to take depositions before any designated individual competent to administer oaths, and to examine witnesses. (Pub. L. 93–627, § 24, Jan. 3, 1975, 88 Stat. 2147.)

§ 1524. Authorization of appropriations.

There is authorized to be appropriated for administration of this chapter not to exceed $2,500,000 for the fiscal year ending June 30, 1975, not to exceed $2,500,000 for the fiscal year ending June 30, 1976, and not to exceed $2,500,000 for the fiscal year ending June 30, 1977. (Pub. L. 93–627, § 25, Jan. 3, 1975, 88 Stat. 2147.)